

EXHIBIT 1

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALPENSPRUCE EDUCATION SOLUTIONS
INC., a Washington corporation,

No. 2:23-cv-00692-MJP

PLAINTIFF'S DISCLOSURE OF EXPERT TESTIMONY

V.

13 | CASCADE PARENT LIMITED, a Jersey
14 | limited company; and PARALLELS INC., a
| Delaware corporation,

Defendant.

In accordance with Fed. R. Civ. P. 26(a)(2) and the Amended Court's scheduling order, Dkt.

33, Plaintiff Alpenspruce Education Solutions Inc., makes the following expert witness disclosure:

A. Witnesses who must provide a written report:

1. Drew E. Voth. An expert report summarizing Mr. Voth's opinions is being served with this disclosure. Mr. Voth may also present expert testimony rebutting the testimony and/or reports of Defendants' expert(s).
 2. Any other witness or witnesses retained to rebut the reports of Defendant's expert(s).

PLAINTIFF'S DISCLOSURE OF EXPERT TESTIMONY
CASE NUMBER 2:23-CV-00692-MJP - 1

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EXHIBIT 2

Exhibit Filed Under Seal

EXHIBIT 3

Exhibit Filed Under Seal

EXHIBIT 4

Exhibit Filed Under Seal

EXHIBIT 5

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ALPENSPRUCE EDUCATION SOLUTIONS
INC., a Washington corporation,

Case No. 2:23-cv-00692-MJP

Plaintiff,

v.

CASCADE PARENT LIMITED, a Jersey
limited company; and PARALLELS INC., a
Delaware corporation,

Defendant.

Expert Report of Joel H. Steckel, Ph.D.
September 20, 2024

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I. Introduction

A. Qualifications

1. I am a Professor of Marketing at the Leonard N. Stern School of Business, New York University (“NYU Stern”), where I have taught since January 1989. I served as NYU Stern’s Vice Dean for Doctoral Education from August 2012 to September 2021. Overlapping that interval, I also served as the Acting Chairperson of the school’s Accounting Department from August 2016 to August 2019. Prior to my promotion to Vice Dean, I was the faculty director of the Stern School Doctoral Program for five years, from May 2007 to July 2012. Earlier I served as the Chairperson of NYU Stern’s Marketing Department for six years, from July 1998 to June 2004. I have also held either permanent or visiting faculty appointments at the Graduate School of Business, Columbia University; the Anderson Graduate School of Management, U.C.L.A.; the School of Management, Yale University; and the Wharton School, University of Pennsylvania. During the academic year 2022-2023, I served as a visiting scholar at the University of Pennsylvania Carey Law School while I was on sabbatical.
2. I received my B.A. *summa cum laude* from Columbia University in 1977, and M.B.A. (with distinction), M.A., and Ph.D. degrees from the Wharton School, University of Pennsylvania in 1979, 1980, and 1982, respectively. I was elected to *Phi Beta Kappa* at Columbia University and *Beta Gamma Sigma* at the Wharton School. These are the national honor societies for the respective disciplines I studied at these institutions.
3. I was the Founding President of the INFORMS (Institute for Operations Research and Management Science) Society on Marketing Science (“ISMS”), the foremost professional group for the development and application of management science theory and tools in marketing. In addition, I am a member of the American Marketing Association, the American Statistical Association, the Association for Consumer Research, the American Psychological Association, the American Association for Public Opinion Research, and the Society for Consumer Psychology.

4. My fields of specialization within marketing include marketing research methodologies, marketing and branding strategies, the relationship between marketing research and marketing strategy, managerial decision-making, and consumer decision-making. I am an author or editor of five books and over 60 articles. In the course of my scholarly research, teaching, and consulting work, I have studied issues of marketing research, branding, their roles in consumer choice and marketing strategy, and the use of marketing research in legal disputes.
5. I have sat on the editorial boards of many major journals over the years. From July 2010 until March 2017, I served as a co-Editor-in-Chief of the journal *Marketing Letters*. In that capacity, I evaluated over 200 research studies each year for over six and a half years. I served as a gatekeeper, deciding which articles were published in the journal, and which were not. As such, my evaluations of the scientific reliability and validity of each research study were subject to the scrutiny of the academic community. The community considers any study that appeared in the journal that did not conform to the scientific standards of my profession as a black mark on my record. I consider the fact that the journal's publisher, the international firm, Springer-Verlag, kept me on long past the expiration of my term (July 2014) as validation of my performance in evaluating research. My professional qualifications are described further in my curriculum vitae, which is attached as **Appendix A**.
6. I have served as an expert witness on marketing research, marketing strategy, branding, trademark, and issues related to consumer decision-making in a variety of litigation matters. In the past four years, I testified as an expert witness in the matters listed in **Appendix B**.

B. Relevant Allegations

7. Plaintiff Alpenspruce Education Solutions Inc. ("Plaintiff") is "a technology services firm serving school districts across the United States and provid[ing] a professional

development software platform for online and blended learning.”¹ Plaintiff brings this action against Cascade Parent Limited, which has its principal place of business in St. Helier, New Jersey,² and Parallels Inc., a Delaware corporation with its principal place of business in Austin, Texas (collectively, “Defendants”).³

8. According to the Complaint, since 2018, Plaintiff “has conducted substantial business under and engaged in substantial promotion of its ALLUDO mark,” and offered its products on the website <https://www.alludolearning.com/>.⁴ Plaintiff’s Alludo product is an online professional development platform for K-12 school districts that offers remote “professional learning courses for educators” through “on-line non-downloadable software for developing skills through goal setting, goal tracking, and competition with other users.”⁵
9. Defendant Cascade is a “global technology company” that provides “innovative, professional-caliber graphics, virtualization, and productivity solutions.”⁶ Since 1985, Defendant Cascade had “operated under the name Corel and marketed software products such as CorelDRAW, MindManager, Parallels, WinZip, PaintShop Pro, and WordPerfect under the Corel brand.”⁷ I understand that Defendant Cascade rebranded itself in

¹ Plaintiff’s First Amended Complaint, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, July 14, 2023 (“Complaint”), ¶ 15.

² Complaint, ¶ 7.

³ Complaint, ¶ 8.

⁴ Complaint, ¶ 19-20.

⁵ Plaintiff Alpenspruce Education Solutions Inc.’s Answers and Objections to Defendants’ First Set of Interrogatories, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, October 9, 2023, p. 3; “An easy, effective professional development platform for educators,” *Alludo*, available at <https://www.alludolearning.com/platform>, accessed on September 11, 2024 (“Can you imagine professional learning courses for educators that are relevant to your teachers’ and students’ development, align with district initiatives, and positively affect student success?”); “What is Alludo? A learner-centered PD platform for K12 school districts!” *Alludo*, available at <https://l.alludolearning.com/what-is-alludo>, accessed on September 11, 2024; Complaint, ¶ 18.

⁶ “Corel is reimagining the future of work—and its own historic brand—as it fully rebrands as Alludo,” *Alludo*, September 13, 2022, available at <https://www.alludo.com/en/newsroom/press-releases/20220913-corel-rebrands-as-alludo/>; “Hi! We’re Alludo,” *Alludo*, available at <https://www.alludo.com/en/about/>, accessed on September 9, 2024 (“Our innovative, professional-caliber graphics, virtualization, and productivity solutions are used by millions of people around the world every day.”).

⁷ Complaint, ¶ 3.

September 2022 and “began use of the term ‘Alludo’ for its corporate brand” while having all of its subsidiaries maintaining “the individual and unique names and brands of their products.”⁸

10. Defendant Parallels is a virtualization software brand owned by Defendant Cascade that provides users connections “to the applications and desktops” across devices and operating systems.⁹
11. Plaintiff alleges that Defendants are “infringing on Plaintiff’s ALLUDO trademark and brand” and creating “confusion among K-12 educators, administrators, parents and students, as well as other members of the unsuspecting public.”¹⁰ Specifically, Plaintiff alleges that “Defendants’ conduct has led to confusion amongst consumers, their own employees, and the general public” and “resulted in Plaintiff’s customers being confused as to the source of the parties’ respective goods and services.”¹¹ Plaintiff further states its “concern[] that issues with Defendants’ customer service may be attributed to Plaintiff by consumers and result in damage to Plaintiff’s reputation.”¹²

C. Assignment

12. I have been retained by Barnes & Thornburg LLP, Counsel for Defendants to assess whether and to what extent Plaintiff’s actual and potential consumers are aware of Plaintiff’s Alludo product. Specifically, I have been asked to develop and conduct a survey to assess whether and to what extent the target consumers of Plaintiff’s Alludo product (i.e., educators and administrators in the K-12 school system) are aware of the product as a

⁸ Defendant Cascade Parent Limited’s Answer to Plaintiff’s First Amended Complaint, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, August 11, 2023, pp. 2-3.

⁹ “Partner Program,” *Parallels*, available at <https://www.parallels.com/partners/>, accessed on September 9, 2024 (“Parallels has been a trusted leading brand in the virtualization space for over 30 years and is always evolving to embrace modern platforms.”); “Our Brands,” *Alludo*, available at <https://www.alludo.com/en/brands/>, accessed on September 9, 2024 (“Connecting you to the applications and desktops you need — no matter the device or OS.”).

¹⁰ Complaint, ¶ 2.

¹¹ Complaint, ¶¶ 40-41.

¹² Complaint, ¶ 47.

brand that provides online professional development courses to K-12 educators and administrators (my “Brand Awareness Study”).

13. In undertaking this assignment, I relied on my experience studying marketing and branding strategies, my review of documents and other materials provided to me by Counsel or obtained from public sources, and my analysis of the results of my Brand Awareness Study, a survey I designed and fielded in connection with this matter. **Appendix C** includes a complete list of materials I have reviewed to date in connection with this particular assignment. If new information is made available to me, I may update my opinions.
14. My rate of compensation for this assignment is \$1,250 per hour. Staff at Analysis Group, Inc. (“AG”), an economic and litigation consulting firm headquartered in Boston, Massachusetts, performed part of the work for this assignment under my direction. I receive additional compensation from AG related to the work of others under my supervision. No compensation is contingent upon the outcome of this research or of the case.

II. Summary of Opinions

15. I conducted my Brand Awareness Study to determine whether K-12 educators and administrators are aware of Plaintiff’s Alludo product as a brand providing online professional development courses to K-12 educators and administrators. I gathered a sample of respondents that is representative of K-12 educators and administrators in the U.S., and my key survey questions were one open-ended (unaided) and one closed-ended (aided) question to determine whether K-12 educators and administrators are aware of Plaintiff’s Alludo product as a brand providing online professional development courses to K-12 educators and administrators. My survey results found *no* unaided awareness of Plaintiff’s Alludo product among its target consumers, and only minimal aided awareness of Plaintiff’s Alludo product among its target consumers (1.2 percent of respondents). These results demonstrate that Plaintiff’s target consumers have no or very little awareness of Plaintiff’s Alludo product as a brand providing online professional development courses to K-12 educators and administrators.

III. MY BRAND AWARENESS STUDY DEMONSTRATES THAT PLAINTIFF'S TARGET CONSUMERS HAVE NO OR VERY LITTLE AWARENESS OF PLAINTIFF'S ALLUDO PRODUCT AS A BRAND IN ITS PRODUCT CATEGORY

16. I conducted my Brand Awareness Study to determine whether K-12 educators and administrators are aware of Plaintiff's Alludo product as a brand providing online professional development courses to K-12 educators and administrators. This research question examines whether and the extent to which Plaintiff's actual and potential consumers recall or recognize Plaintiff's Alludo product as a brand in its product category, i.e., among online platforms and software for the professional development of K-12 educators and administrators.¹³
17. The results of my Brand Awareness Study demonstrate that Plaintiff's target consumers have no or very little awareness of Plaintiff's Alludo product as a brand providing online professional development courses to K-12 educators and administrators. Specifically, my survey results found *no* unaided awareness of Plaintiff's Alludo product among its target consumers, and only minimal aided awareness of Plaintiff's Alludo product among its target consumers (1.2 percent of respondents).
18. Screenshots of my Brand Awareness Study as it appeared to respondents are attached as **Appendix D.1**. The survey instrument for my Brand Awareness Study is attached as **Appendix D.2**.

A. Best Practices in Survey Design

19. I designed and conducted my Brand Awareness Survey in a manner consistent with the scientific standards and best practices of my profession, both generally for marketing research and for research conducted for the purpose of litigation.¹⁴

¹³ Complaint, ¶ 2.

¹⁴ I closely adhere to the standards set forth by Federal Judicial Center, in the "Reference Guide on Survey Research" and in the "Manual for Complex Litigation." Both are critical references for designing and conducting valid and reliable studies used in litigation. See Diamond, Shari Seidman, "Reference Guide on Survey Research," in *Reference Manual on Scientific Evidence*, Third Edition, National Academies Press, 2011, pp. 359-423 ("Diamond (2011)"); *Manual for Complex Litigation*, Federal Judicial Center, Fourth Edition, 2004 ("Manual for Complex Litigation"), p. 103.

20. A good survey methodology seeks to avoid demand artifacts; that is, situations in which the methodology and/or survey suggest to respondents that they should provide a particular response that is “demanded” by the survey.¹⁵ To avoid demand artifacts, I implemented a “blind” approach, ensured that questions were asked in a double-sided manner, randomized answer options, conducted pretests, and avoided giving respondents any indication that the survey was related to a litigation involving Plaintiff or Defendants. I discuss each of these elements in turn below.
21. Double-blind methodology. Respondents did not know the sponsor or purpose of the study, nor was this information identified to them at any time before, during, or after their completion of their survey. This prevented respondents from adapting their behavior or responses to what they perceived the sponsor of the survey wanted.¹⁶ Additionally, since the study was administered online by a computer program, there was no way for the survey administrator (i.e., the computer) to provide any cues indicating the sponsor or purpose of the study. Web-based surveys are recognized for providing reliable data because they generate high response rates, elicit truthful answers because of their anonymous nature, and do not introduce potential interviewer bias.¹⁷ In addition, I ensured that the staff at Research Results (who programmed and fielded the survey),¹⁸ the moderators of my pretests, and the coders of open-ended responses were blind to the purpose of my study.
22. Double-sided questions. To prevent each of the questions from being leading,¹⁹ I assigned “balanced and explicit emphasis to the neutral as well as affirmative and negative positions,”²⁰ and provided a “Don’t know / Unsure,” or equivalent, option for appropriate

¹⁵ For a discussion of demand artifacts, see Sawyer, Alan G., “Demand Artifacts in Laboratory Experiments in Consumer Research,” *Journal of Consumer Research*, Vol. 1, No. 4, 1975 (“Sawyer (1975)”).

¹⁶ Diamond (2011), pp. 410-411.

¹⁷ Miller, Jeff, “Online Marketing Research,” in *The Handbook of Marketing Research*, Sage Publications, Inc., 2006 (“Miller (2006)”), pp. 111-112.

¹⁸ Research Results programs surveys and works with panel companies to recruit high quality respondents. See “Sampling,” *Research Results*, available at <https://researchresults.com/sampling/>, accessed on September 10, 2024.

¹⁹ See Diamond (2011), p. 388 (“[w]hen unclear questions are included in a survey, they may threaten the validity of the survey by systematically distorting responses if respondents are misled in a particular direction”).

²⁰ Jacoby, Jacob, “Are Closed-Ended Questions Leading Questions?” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, American Bar Association, 2012 (“Jacoby (2012)”), p. 275.

questions. Thus, the relevant questions were balanced and did not provide respondents contextual cues as to what answers to provide.²¹

23. Rotation and randomization. According to the *Reference Guide on Survey Research*, “the order in which response alternatives are provided in a closed-ended question can influence the answers.”²² In order to avoid such potential order effects, the *Reference Guide on Survey Research* recommends that “the order of the response choices in a survey should be rotated.”²³ As a result of these recommendations, the order in which answer options were presented to respondents was randomized for relevant questions. The full questionnaire for my Brand Awareness Study, presented in **Appendix D.2**, describes the questions for which the order of answer options was randomized.
24. Distractor response options. To prevent respondents from being able to guess the purpose of the survey, I included distractor response options in closed-ended questions. The distractor response options also helped to avoid suggesting to respondents that a given response option was of particular interest.²⁴ Distractor response options are relevant to the topic at hand, but are focused on aspects other than the research question of interest, and are widely used in surveys.²⁵

²¹ Diamond (2011), p. 390 (“[T]he survey can use a quasi-filter question to reduce guessing by providing ‘don’t know’ or ‘no opinion’ options as part of the question [...] By signaling to the respondent that it is appropriate not to have an opinion, the question reduces the demand for an answer and, as a result, the inclination to hazard a guess just to comply.”).

²² Diamond (2011), p. 395.

²³ Diamond (2011), p. 396.

²⁴ See, e.g., Jacoby (2012), p. 273 (“What makes a question a leading question is that it does more than cause a respondent to *think* in terms of the subject matter posed by the question; it also guides or biases the respondent to *answer* one way rather than another. This can be accomplished in one of two general ways—either by making one or more responses (or response options) *more* likely to be selected than others, or by making one or more responses (or response options) *less* likely to be selected than others. All questions lead respondents to think; this does not make them leading questions. It is only when a question leads you to *answer* one way rather than another that it is considered leading. As the passages from authorities on legal evidence cited earlier indicate, when a (closed-ended or open-ended) question does not lead the respondent to select one *response* over others, it is not a leading question.”) (emphasis in original) (internal citations omitted).

²⁵ See, e.g., Simonson, Itamar, and Ran Kivetz, “Demand Effects in Likelihood of Confusion Surveys: The Importance of Marketplace Conditions,” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, First Edition, American Bar Association, 2012, p. 250. See also, e.g., Kugler, Matthew B., and R. Charles Henn Jr., “Internet Surveys in Trademark Cases: Benefits, Challenges, and Solutions,” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, Second Edition, American Bar Association, 2022, p. 304 (“[M]ost trademark surveys will include ‘distractor’ questions or answer choices obscuring the subject matter of the survey.”).

25. **Pretesting.** According to the *Reference Guide on Survey Research*, “texts on survey research generally recommend pretests as a way to increase the likelihood that questions are clear and unambiguous, and some courts have recognized the value of pretests.”²⁶ A pretest is a standard practice that aims to confirm that all questions in a survey are understood by respondents, that the survey is navigable, and that respondents cannot guess the purpose of the study.²⁷ Before my Brand Awareness Study was fielded, 12 pretests were conducted under my direction, with respondents from the target population.²⁸ The questions used in my pretests were in accordance with best research practices to explore respondents’ understanding of the measure of interest.

²⁶ Diamond (2011), p. 388.

²⁷ See Diamond (2011), pp. 388-389 (The “Reference Guide on Survey Research” recommends pretests be conducted on a sample of people who would be eligible to take the actual survey. Furthermore, the “Reference Guide on Survey Research” recommends that “interviewers observe the respondents for any difficulties they may have with the questions and probe for the source of any such difficulties so that the questions can be rephrased if confusion or other difficulties arise.”).

²⁸ It is standard practice to pretest approximately 10 respondents, or until the researcher is confident that the questions in the survey are understood by respondents, that the survey is navigable, and that respondents cannot guess the purpose of the study. Pretest respondents are not included in the final sample. Prior to finalizing my Brand Awareness Study, 12 pretests were conducted under my direction on August 29 and 30, 2024. See **Appendix D.3** for the pretest moderator scripts. Respondents generally found the survey easy to understand and could not glean the purpose of the study. Following the pretests, I made minor language changes for clarity and balance.

First, I updated the wording of the instructions in Q0 from “On the following screens, you will be asked to answer a few questions about online learning platforms for skill and professional development.” to “On the following screens, you will be asked to answer a few questions about how educators can meet *their own* skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes. Specifically, the questions will be about online learning platforms or software that provide a catalog of such courses for educators.” Second and similarly, I updated the wording of the question in Q1 from “Thinking about online learning platforms providing skill and professional development courses for educators, which brands come to mind?” to “Please think about how educators can meet *their own* skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes. Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any?” Third and again similarly, I updated the wording of the question in Q2 from “Thinking about online learning platforms providing skill and professional development courses for educators, which of the following brands do you recognize?” to “Please think about how educators can meet *their own* skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes. Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize?”

B. Study Design and Administration

26. My Brand Awareness Study was administered online, using Research Results' survey panel partners.²⁹ Respondents could take the survey using a mobile device or a tablet, laptop, or desktop computer. The survey was in field from August 30 to September 7, 2024, and a total of 250 respondents completed my Brand Awareness Study.

1. Identifying and Sampling from the Relevant Target Population

27. **Target Population.** I followed survey best practices for identifying and sampling from the relevant target population. In the *Reference Guide on Survey Research*, Dr. Shari Diamond writes, “[o]ne of the first steps in designing a survey … is to identify the target population (or universe). The target population consists of all elements (i.e., individuals or other units) whose characteristics or perceptions the survey is intended to represent.”³⁰ Dr. Diamond further notes that the “definition of the relevant population is crucial because there may be systematic differences in the responses of members of the population and nonmembers,” and as a result, “[a] survey that provides information about a wholly irrelevant population is itself irrelevant.”³¹ The target population for my Brand Awareness Study consists of educators and administrators currently employed by a K-12 school or school district in the U.S, who I understand are the target consumers for Plaintiff’s Alludo product.³²

²⁹ “Sampling,” *Research Results*, available at <https://researchresults.com/sampling/>, accessed on September 10, 2024.

³⁰ Diamond (2011), p. 376.

³¹ Diamond (2011), p. 377.

³² See Complaint, ¶ 15 (“Plaintiff is a technology services firm serving school districts across the United States and provides a professional development software platform for online and blended learning.”); Plaintiff Alpenspruce Education Solutions Inc.’s Answers and Objections to Defendants’ First Set of Interrogatories, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, October 9, 2023, p. 5 (“Alpenspruce markets its services throughout the United States through the following channels and in the following ways: through its <alludolearning.com> and <Alpenspruce.com> websites; sponsoring events for school districts; attending and participating in conferences; Search Engine Optimization; Google AdWords; social media advertisements through its social media channels, including Facebook, Instagram and Twitter; direct email campaigns; organic social media campaigns; affiliate and referral marketing campaigns; partnership marketing campaigns; pay per click marketing campaigns; direct mail campaigns; and digital magazine advertisements.”).

28. **Sample.** To accurately draw conclusions regarding the target population, an appropriate sampling methodology must be employed to gather a sample that is representative of the target population in terms of respondent demographics.³³ After passing a CAPTCHA (S1),³⁴ respondents went through the screening stage of the survey. As part of this screening, respondents provided their age category, sex, and state of residence (S2-S4).³⁵ If respondents' age category and sex did not match the value they provided to the panel, or if respondents selected "None of the above" for their state of residence, they were terminated from the survey. Respondents were then asked to indicate their employer and role from closed-ended lists and were only permitted to proceed if they indicated that they are employed by "a K-12 school or school district" as an "Educator (e.g. Teacher, Teaching Assistant)" or "Administrator (e.g., Principal, Superintendent, Director)" (S5-S6).³⁶
29. To ensure that the respondent sample resulting from the screening process is representative of the target population, I established percentage quotas for respondents who completed the survey to reflect the distributions of U.S. K-12 educators and administrators according to their respective age categories, sex, and census regions. Specifically, I estimated the distribution of U.S. K-12 educators and administrators by age, sex, and census region based on data from the U.S. Census Bureau's American Community Survey (ACS) 2022 5-Year Public Use Microdata Sample.³⁷ I limited the ACS dataset to the subset of the population who are K-12 educators and administrators based on the ACS dataset's industry and occupation variables.³⁸ I then calculated the estimated percentage of K-12 educators and

³³ See Diamond (2011), pp. 377-383, p. 380 ("Identification of a survey population must be followed by selection of a sample that accurately represents that population.").

³⁴ Appendix D.2, p. D.2-1.

³⁵ Appendix D.2, p. D.2-2.

³⁶ Appendix D.2, pp. D.2-2-3.

³⁷ "American Community Survey 2022 5-Year Public Use Microdata Sample," *United States Census Bureau*, available at <https://www2.census.gov/programs-surveys/acs/data/pums/2022/5-Year/>, accessed on September 11, 2024; "PUMS Data," *United States Census Bureau*, May 14, 2024, available at <https://www.census.gov/programs-surveys/acs/microdata/access.html>.

³⁸ I first used the industry code variable identifying the North American Industry Classification System ("NAICSP") to identify those working in the K-12 industry, i.e. only those who were identified as working in the "6111 EDU – Elementary and Secondary Schools" were included. I then used the occupation code variable identifying the Standard Occupational Classification ("SOCP") to identify educators and administrators, i.e. only those who were identified as having at least one of the following occupations were included: "252010

administrators in the U.S. who fall into each age (for those age 18 and older), sex, and census region category.³⁹ This process of balancing survey completes ensures that my survey sample is representative of K-12 educators and administrators in the U.S.

30. Further, to remove those respondents who may have specialized knowledge related to this litigation from their family members, the study excluded individuals who have a family member(s) working for a company that is: an online training company or learning software company; a law firm, legal services organization, or court; or a marketing, market research, or advertising agency (S7).⁴⁰ In addition to excluding respondents who had a family member(s) who worked in these industries, I also excluded respondents who had taken any surveys on professional development software in the past 30 days (S8),⁴¹ as well as respondents who failed an attention check question in the screener (S9).⁴²
31. A total of 250 respondents completed my Brand Awareness Study. A complete description of the response rate and completion rate for the full Brand Awareness Study sample is provided in **Exhibit 1**.

2. *Main Questionnaire and Follow-up Questions*

32. At the beginning of the main survey, respondents were instructed to “think about the materials and resources you have encountered that can help set, track, and achieve your skill and professional development goals,” followed by a description of the product category to which Plaintiff’s Alludo product belongs.⁴³

³⁹ EDU-Preschool And Kindergarten Teachers,” “252020 EDU-Elementary And Middle School Teachers,” “252030 Secondary School Teachers,” “252050 Special Education Teachers,” “2530XX Other Teachers And Instructors,” “259040 Teaching Assistants,” “119030 MGR-Education And Childcare Administrators.” “2018-2022 ACS PUMS DATA DICTIONARY,” *United States Census Bureau*, January 25, 2024, available at https://www2.census.gov/programs-surveys/acs/tech_docs/pums/data_dict/PUMS_Data_Dictionary_2018-2022.pdf.

⁴⁰ See backup calculations.

⁴¹ Appendix D.2, p. D.2-3.

⁴² Appendix D.2, p. D.2-3.

⁴³ Appendix D.2, p. D.2-5 (emphasis in original).

Figure 1.
**Screenshot of Q0 Instructions as Shown
to Respondents in My Brand Awareness Study**

You indicated that you are currently employed as an educator or administrator in a K-12 school or school district.

Please think about the materials and resources you have encountered that can help set, track, and achieve your skill and professional development goals.

On the following screens, you will be asked to answer a few questions about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes. Specifically, the questions will be about online learning platforms or software that provide a catalog of such courses for educators.

Please do not use your browser's "Back" button.

If you don't know an answer to a question or if you don't have an opinion, please don't guess. Simply indicate this in your response by selecting the "Don't know / Unsure" option. There are no right or wrong answers.

63%

Continue >

33. The description above of the product category to which Plaintiff's Alludo product belongs was adapted from consumer-facing language used by online platforms providing professional development courses to this audience and the features they provide, including Plaintiff's Alludo product itself,⁴⁴ Frontline Professional Growth,⁴⁵ and PowerSchool.⁴⁶

⁴⁴ “An easy, effective professional development platform for educators,” *Alludo*, available at <https://www.alludolearning.com/platform>, accessed on September 11, 2024 (“We give you access to already-built, fresh content that makes up 80% of your curriculum, so you can focus on your top needs in an instant. The Alludo Catalog equips you with curated content and online courses you can reuse and tailor in minutes (not months.”); “About,” *Alludo*, available at <https://www.alludolearning.com/about>, accessed on September 11, 2024 (“Alludo leverages gamification to encourage teachers, administrators, staff or students to acquire new skills and experience. By providing a fun, competitive, self-paced environment, players are empowered to own their learning, choose topics aligned with their goals while collaborating with peers, earning badges, and gaining knowledge.”).

⁴⁵ “Professional Learning Management Software,” *Frontline Education*, available at <https://www.frontlineeducation.com/school-hcm-software/professional-growth/lms-for-teachers/>, accessed on September 6, 2024 (“Provide personalized professional learning for teachers — and all employees — to improve practice and enhance student outcomes.”; “Offer a Catalog of Goal-aligned Learning Opportunities Provide relevant learning experiences for all teachers and employees with online/virtual courses, in-district workshops, out-of-district events, conferences and more.”).

⁴⁶ “The Three Most Common Types of Teacher Professional Development and How to Make Them Better,” *PowerSchool*, November 15, 2023, available at <https://www.powerschool.com/blog/the-three-most-common-types-of-teacher-professional-development-and-how-to-make-them-better/> (“The PowerSchool Premium

34. **Key Questions.** Respondents were asked one open-ended (Q1) and one closed-ended question (Q2) to determine whether K-12 educators and administrators are aware of Plaintiff's Alludo product as a brand providing online professional development courses to K-12 educators and administrators. Open-ended questions prompt respondents to type answers in their own words in a text box in an unaided manner, rather than selecting from a series of predetermined response options. An open-ended format has the benefit of gleaning the top-of-mind responses to a question while giving "fewer hints about expected or preferred answers," and without "reminding respondents of options that they might not otherwise consider."⁴⁷ After allowing respondents to express their most top-of-mind thoughts in an open-ended format, following up with a similar question in a closed-ended format allows one to more fully ascertain respondents' thoughts or opinions on a given topic.⁴⁸ Academic literature on brand equity also explains that consumers' awareness of a brand can be "assessed effectively through a variety of aided and unaided measures."⁴⁹ Specifically, unaided measures such as "[b]rand recall measures may use different sets of

Library expands your teachers' and staff's online professional learning options with a growing library of high-quality, self-paced PD courses from accredited vendors. Easily search, assign, and track PD so you can ensure you're consistently meeting core educator learning needs. Provide targeted training to your educators and staff on the most relevant education subjects today. Course subjects span a variety of content areas, target audiences, grade levels, and professional standards, and cover topics such as compliance, social and emotional learning (SEL), and classroom technology.").

⁴⁷ Diamond (2011), p. 392.

⁴⁸ See, e.g., Jacoby (2012), p. 271 ("Open-ended questions are better in evoking what is 'top of mind' for most respondents, and doing so without raising issues for their consideration [...] However, open-ended questions typically fail to capture all pertinent information respondents actually have in mind, especially when that information is detailed and complex."); Diamond (2011), pp. 391-392, Footnote 148.

⁴⁹ Keller, Kevin Lane, "Conceptualizing, Measuring, and Managing Customer-Based Brand Equity," *Journal of Marketing*, Vol. 57, No. 1, 1993, ("Keller (1993)", p. 12. See also, e.g., Day, George S., and Robert W. Pratt, Jr., "Stability of Appliance Brand Awareness," *Journal of Marketing Research*, Vol. 8, 1971, p. 85, Footnote 1 ("Each respondent was asked the same two questions— dealing with unaided and aided recall of appliance brands—during both interviews."); "The questions were: 'When you think of household appliances, what brands come to mind?' and 'Here is a list of brands some of which you may have already mentioned. Are there any other brands on this list that you know or have heard of?'"'); Hutchinson, J. Wesley, Kalyan Raman, and Murali K. Mantrala, "Finding Choice Alternatives in Memory: Probability Models of Brand Name Recall," *Journal of Marketing Research*, Vol. 31, 1994, pp. 441, 443, 446. ("[B]rand recall has traditionally been measured using category cues, as in top-of-mind awareness (e.g., 'When you think of beer, what brands come to mind?'). In recognition, the consumer is exposed to the brand name and must simply identify it as appropriate for the task at hand (e.g., noticing a Budweiser display in the grocery store)."; "Recall tasks begin with an external cue. Typically, in both real-world choices and experimental research, the initial cue is a word or phrase that identifies a product category or consumer need."); "[Respondents] began by turning the page of the response booklet which revealed the category to be recalled in the sentence frame: 'Please recall as many brand names as you can of ____.'").

cues, such as progressively narrowly defined product category labels,” to measure “[c]orrect identification of brand given product category,” and aided measures such as “brand recognition measures may use the actual brand name” to measure “[c]orrect discrimination of brand as having been previously seen or heard.”⁵⁰

35. First, an open-ended question assessed respondents’ unaided brand awareness (Q1), as shown in **Figure 2** below:⁵¹

Figure 2.
Screenshot of the Open-Ended, Unaided Awareness Question (Q1)
as Shown to Respondents in My Brand Awareness Study

The screenshot shows a mobile-style survey interface. At the top right is a battery icon and the text '78%'. Below the title, there is a text input field with placeholder text: 'Please think about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.' Below this, another placeholder text reads: 'These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.' A third placeholder text asks: 'Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any?' followed by '(Please be as specific as possible.)'. At the bottom left is a checkbox labeled 'Don't know / Unsure', and at the bottom right is a red 'Continue »' button.

36. Second, a closed-ended version of the question assessed respondents’ aided brand awareness (Q2), as shown in **Figure 3** below.⁵²

⁵⁰ Keller (1993), pp. 12, 14.

⁵¹ Appendix D.2, p. D.2-5.

⁵² Appendix D.2, p. D.2-6.

Figure 3.
Screenshot of the Closed-Ended, Aided Awareness Question (Q1)
as Shown to Respondents in My Brand Awareness Study

Please think about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.

These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize?

(Select all that apply)

PowerSchool
 edWeb
 Teaching Channel
 Dolphyn Learning
 SimpleK12
 BirchPD
 Frontline Professional Growth
 ASCD Professional Development Tools
 BetterLesson
 Alludo
 Don't know / Unsure
 None of the above

[Continue »](#)

37. The substantive answer options in the closed-ended question Q2 included “Alludo,” two “red herring” answer options,⁵³ and seven other online professional development platforms for K-12 educators and administrators, for a total of ten answer options. I chose the seven non-“Alludo” platforms by conducting exploratory Google searches for combinations of search terms including descriptors of function (“professional development,” “PD,” “professional learning”), format (“platform,” “software,” “courses,” “online”) and consumer (“for educators,” “for teachers,” “for schools”), based upon how Plaintiff describes the product category of its Alludo product. Among the platforms identified through this search, I considered for inclusion as answer options only those platforms with functionality geared towards schools or school districts and those that offer existing courses on various professional development topics in online formats, including videos, readings, and quizzes. From the initial list, I selected seven options for inclusion alongside Plaintiff’s Alludo product and the two red herrings. First, I identified and selected for inclusion the five platforms that appeared in more than one identified list of professional development platforms for educators and administrators (Simple K12, BetterLesson, edWeb, ASCD Professional Development Tools, and Teaching Channel).⁵⁴ To select two more answer

⁵³ I included “red herring” answer options (i.e., an answer option that does not exist or is highly improbable as a selection) to ensure that respondents who are included in my analysis are sufficiently attending to the question and answer options. Including “red herring” answer options that “are not legitimate options [...] is very effective in identifying ‘bad’ survey takers” whose responses may be inaccurate. “Conducting an Online Survey? How to Make Sure You Don’t Get Bad Data,” *KS&R*, available at <https://www.ksrinc.com/conducting-an-online-survey/>, accessed on September 12, 2024.

⁵⁴ “Professional Development,” *School Data Leadership*, available at <https://www.schooldataleadership.org/systems/professional-development>, accessed on September 12, 2024; “How Teachers Are Learning: Professional Development Remix,” *EdSurge*, available at <https://www.edsurge.com/research/reports/how-teachers-are-learning-professional-development-remix>, accessed on August 12, 2024; “15 Top Resources for Teacher Professional Development (Including Free Options!),” *We Are Teachers*, November 30, 2023, available at <https://www.weareteachers.com/professional-development-for-teachers/>; “Best Professional Development Websites and PLNs for Teachers,” *Common Sense Education*, available at <https://www.commonsense.org/education/lists/best-professional-development-websites-and-plns-for-teachers>, accessed on August 12, 2024; Restifo, Diana, “Best Sites for Educator Professional Development,” *Tech&Learning*, October 24, 2023, available at <https://www.techlearning.com/resources/top-sites-for-educator-professional-development>; Moraschinelli, Walter, “Professional Development Software: the 7 Best Options,” *Slides with Friends*, available at <https://slideswith.com/blog/best-professional-development-software>, accessed on August 12, 2024; “10 Best Professional Development Courses for Teachers in 2023,” *Teachers of Tomorrow*, October 30, 2023, available at <https://www.teachersoftomorrow.org/blog/insights/best-professional-development-courses-for-teachers/>; “Top 10 Professional Development Services Companies – 2023,” *Education Technology Insights*, available at <https://professional-development-services.educationtechnologyinsights.com/vendors/top-professional-development-services-companies.html>, accessed on September 18, 2024; Dubey, Shashank, “18 Best Professional Development Tools For Teachers In

options, I evaluated the page rank of all identified platforms using SimilarWeb and included the two highest ranked platforms (Frontline Professional Growth and PowerSchool).⁵⁵

38. **Follow-up question to test for litigation awareness.** According to the *Reference Guide on Survey Research*, “it is standard interview practice in surveys conducted for litigation to do double-blind research whenever possible: Both the interviewer and the respondent are blind to the sponsor of the survey and its purpose.”⁵⁶ At the end of my Brand Awareness Study, all respondents were asked whether they were aware of any litigation involving online professional development platforms or software.⁵⁷

C. Data Analysis

39. As discussed in the previous section, I designed my Brand Awareness Study to assess whether and to what extent K-12 educators and administrators are aware of Plaintiff’s Alludo product as a brand providing online professional development courses to K-12 educators and administrators. My survey results found *no* unaided awareness of Plaintiff’s Alludo product among its target consumers, and only minimal aided awareness of Plaintiff’s Alludo product among its target consumers (1.2 percent of respondents).

2024,” *Teacher Professional Development*, May 2, 2024, available at <https://tpd.edu.au/best-professional-development-tools-for-teachers/>; Alfie, Samuel, “Professional Development Tools For Teachers,” *eLearning Industry*, October 12, 2019, available at <https://elearningindustry.com/professional-development-tools-for-teachers>.

⁵⁵ See Backup Table 1; A website’s country ranking is calculated “based on a mix of [SimilarWeb’s] estimations of a site’s monthly unique visitors and monthly pageviews across desktop and mobile web traffic [...] compared to [...] domains in the country from which the analyzed domain gets most traffic.” “Rank,” *SimilarWeb*, available at <https://support.similarweb.com/hc/en-us/articles/213452305-Rank>, accessed on September 12, 2024.

⁵⁶ Diamond (2011), pp. 410-411.

⁵⁷ Appendix D.2, p. D.2-6.

I. Response Statistics

40. A total of 250 respondents completed my Brand Awareness Study. A complete description of the response rate and completion rate for the full Brand Awareness Study sample is provided in **Exhibit 1**.

2. Analysis of Responses

41. To measure unaided awareness of Plaintiff's Alludo product as a brand providing online professional development courses to K-12 educators and administrators, I analyzed responses to the open-ended question Q1:⁵⁸

*Open-Ended, Unaided Awareness Question (Q1):*⁵⁹

Please think about how educators can meet *their own* skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any?

42. Based on my analysis of the results of Q1 in my Brand Awareness Study, my survey results found *no* unaided awareness of Plaintiff's Alludo product among its target consumers. None of the 250 total respondents mentioned "Alludo" in Q1 when "[t]hinking about online learning platforms or software that provide"⁶⁰ professional development courses for educators.⁶¹ The unaided awareness of Plaintiff's Alludo product among its target consumers is shown in the "Total Unaided Brand Awareness" column of **Exhibit 2** and **Figure 4** below.

⁵⁸ Academic literature states that unaided awareness questions permit "respondents to arrive at the association themselves, unaided by prompting" (without including the brand name at issue) within the question. McCarthy, J. Thomas, *McCarthy on Trademarks and Unfair Competition*, Thomson Reuters, 2016, ("McCarthy (2016)'), p. 32-444.

⁵⁹ Appendix D.2, p. D.2-5 (emphasis in original).

⁶⁰ Appendix D.2, p. D.2-5 (emphasis in original).

⁶¹ Following my instructions, two independent and blind-to-the-purpose coders reviewed the responses to Q1 to identify whether "Alludo" was mentioned or not. The full set of instructions I provided to the coders are included in Appendix D.4.

Figure 4.
Brand Awareness Study
Unaided and Aided Awareness of Plaintiff's Alludo Product as an Online Platform Offering Professional Development Courses to K-12 Educators and Administrators Among Plaintiff's Target Consumers (N = 250)

Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (*Please be as specific as possible.*)

Q2: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize? (*Select all that apply*)

Total Unaided Brand Awareness ^[1]	Total Aided Brand Awareness ^[2]
0.0%	1.2%

Notes:

[1] Total Unaided Brand Awareness is the sum of respondents who mentioned "Alludo" in their open-ended answers to Q1 (0 respondents) divided by the total number of respondents who completed the survey (250 respondents).

[2] Total Aided Brand Awareness is the sum of all respondents who chose "Alludo" in response to Q2 and who did not mention "Alludo" in their open-ended answers to Q1 (3 respondents), divided by the total number of respondents who completed the survey (250 respondents).

43. To assess aided awareness of Plaintiff's Alludo product as a brand providing online professional development courses to K-12 educators and administrators, I analyzed responses to the closed-ended question Q2:⁶²

Closed-Ended, Aided Awareness Question (Q2):

Please think about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

⁶² Appendix D.2, p. D.2-6 (emphasis in original); Academic literature states that an "aided awareness" question "[asks] the interviewee to choose from among various named products, with the desired response featured prominently in the choices." McCarthy (2016), p. 32-449.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize?⁶³

44. Based on my analysis of the results of Q2 in my Brand Awareness Study, my survey shows minimal awareness of Plaintiff's Alludo product among its target consumers – even when applying an aided question design. Specifically, only 3 out of 250 total respondents (1.2 percent) indicated that they recognized Plaintiff's Alludo product as a brand providing online professional development courses to K-12 educators and administrators. As points of comparison, 122 out of 250 total respondents (48.8 percent) selected PowerSchool, and 91 out of 250 total respondents (36.4 percent) selected Frontline Professional Growth. In fact, respondents recognized all seven other brands at substantially higher rates than Plaintiff's Alludo product, rendering Plaintiff's brand as the least recognized among the tested brands for online professional development courses to K-12 educators and administrators. The aided awareness of Plaintiff's Alludo product in the product category among its target consumers is summarized in **Exhibit 3** and **Figure 5** below.

⁶³ The answer options were Alludo, Simple K12, BetterLesson, edWeb, ASCD Professional Development Tools, Teaching Channel, Frontline Professional Growth, PowerSchool, and two red herrings, BirchPD and Dolphyn Learning, as well as "None of the above" and "Don't know / Unsure." See Appendix D.2, p. D.2-6.

Figure 5.
 Brand Awareness Study
 Aided Awareness of Online Platforms Offering Professional Development Courses
 to K-12 Educators and Administrators Among Plaintiff's Target Consumers
Closed-Ended Responses

Online Learning Platform or Software	Number of Respondents	Share of Respondents
Alludo	3	1.2%
PowerSchool	122	48.8%
Frontline Professional Growth	91	36.4%
edWeb	78	31.2%
SimpleK12	44	17.6%
Teaching Channel	46	18.4%
ASCD Professional Development Tools	27	10.8%
BetterLesson	23	9.2%
None of the above	35	14.0%
Don't know / Unsure	11	4.4%
Total - Survey Completes	250	100.0%

Note:

[1] As an attention check, I included two “red herring” answer options in Q2, BirchPD and Dolphyn Learning. Respondents who selected either of those red herring answer options were terminated from the survey. Of the 264 respondents who answered Q2, 14 selected BirchPD or Dolphyn Learning.

45. As sensitivity analyses, I conducted the same key analyses for each of the following subsets of the 250 total qualified respondents to my Brand Awareness Study: excluding any respondents who indicated that they were aware of any litigation potentially relevant to this matter (i.e., only the 240 respondents who did not indicate that they were aware of any potentially relevant litigation were included in this sensitivity analysis); and excluding any “laggards,” defined as respondents who completed the survey in more than 8 minutes (i.e., only the 242 respondents who completed the survey in 8 minutes or less were included in this sensitivity analysis).⁶⁴ My conclusions remain the same after these sensitivity analyses,

⁶⁴ See **Brand Awareness Sensitivity Exhibits 2-3**. Based on a visual review of the distribution of survey completion times, for my laggard sensitivity analyses, I removed respondents who completed the survey in more than 8 minutes. After this cutoff point, a histogram of the survey completion times shows a gap in the

as detailed in **Brand Awareness Sensitivity Exhibits 2 and 3** in the Steckel backup materials.

46. The above findings inform my conclusion that Plaintiff's target consumers have no or very little awareness of Plaintiff's Alludo product as a brand in its product category of online platforms that provide professional development courses to K-12 educators and administrators.



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response time distribution followed by a minimal number of occurrences across the remaining response time range (i.e., a “long tail”).

Exhibit 1
Brand Awareness Study
Survey Response Statistics

Status	N	% of Total
Completed Survey	250	42.7%
Screened Out of Survey, due to:		
<i>Failed reCaptcha^[1]</i>	19	3.2%
<i>Age or sex mismatch^[2]</i>	11	1.9%
<i>Did not select a state^[3]</i>	0	0.0%
<i>Does not work at a K-12 school or school district^[4]</i>	78	13.3%
<i>Is not a K-12 teacher or administrator^[5]</i>	31	5.3%
<i>Family employment conflict^[6]</i>	23	3.9%
<i>Recent “professional development software” survey experience^[7]</i>	10	1.7%
<i>Failed attention check^[8]</i>	5	0.9%
<i>Selected red herring^[9]</i>	14	2.4%
Self-Termination ^[10]	46	7.8%
Quota full ^[11]	99	16.9%
Total - Clicked on Survey Link	586	100.0%

Notes:

- [1] Respondents who failed the reCaptcha test were screened out of the survey.
- [2] Respondents who indicated that they were under 18 or that they preferred not to indicate their age or sex were screened out of the survey. Additionally, respondents who indicated an age or sex which did not match the value the panel company had on file were screened out of the survey.
- [3] Respondents who did not indicate the state in which they currently reside in S4 (“In which state do you currently reside?”) were screened out of the survey.
- [4] Respondents who did not select “A K-12 school or school district” in S5 (“Are you employed by...?”) were screened out of the survey.
- [5] Respondents who did not select “Educator (e.g. Teacher, Teaching Assistant)” or “Administrator (e.g. Principal, Superintendent, Director)” in S6 (“You indicated that you are currently employed by a K-12 school or school district. What is your role?”) were screened out of the survey.
- [6] Respondents who selected “An online training or learning software company,” “A law firm, legal services organization, or court,” or “A marketing, market research, or advertising agency” in S7 (“Are any of your family members employed by...?”) were screened out of the survey.
- [7] Respondents who indicated that they had participated in a survey about “Professional development software” in the last 30 days in S8 (“Have you taken any surveys in the last 30 days on any of these topics?”) were screened out of the survey.
- [8] Respondents who did not select “5” in response to S9 (“People vary in the amount of attention they pay to these kinds of surveys. Some take them seriously and read each question, whereas others go very quickly and barely read the questions at all. If you have read this question carefully, please select ‘5’ below.”) were screened out of the survey.

Exhibit 1
Brand Awareness Study
Survey Response Statistics

[9] Respondents who selected either of the red herring answer options “BirchPD” or “Dolphyn Learning” in response to Q2 (“[...] Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize?”) were screened out of the survey.

[10] Respondents who dropped out of the survey are listed as self-termination.

[11] Respondents who started the survey after the quota for their respective region, age, and gender had been filled were terminated in order to ensure a balanced sample.

[12] The completion rate, calculated as the total number of completes / total qualified respondents who started the main questionnaire was 100%.

Exhibit 2
Brand Awareness Study

Unaided and Aided Awareness of Plaintiff's Alludo Product as an Online Platform Offering Professional Development Courses to K-12 Educators and Administrators Among Plaintiff's Target Consumers (N = 250)

Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (*Please be as specific as possible.*)

Q2: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize? (*Select all that apply*)

Total Unaided Brand Awareness^[1]	Total Aided Brand Awareness^[2]
0.0%	1.2%

Notes:

[1] Total Unaided Brand Awareness is the sum of respondents who mentioned "Alludo" in their open-ended answers to Q1 (0 respondents) divided by the total number of respondents who completed the survey (250 respondents).

[2] Total Aided Brand Awareness is the sum of all respondents who chose "Alludo" in response to Q2 and who did not mention "Alludo" in their open-ended answers to Q1 (3 respondents), divided by the total number of respondents who completed the survey (250 respondents).

Exhibit 3
Brand Awareness Study
Aided Awareness of Online Platforms Offering Professional Development Courses
to K-12 Educators and Administrators Among Plaintiff's Target Consumers

Closed-Ended Responses

Q2: [...] Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize? (*Select all that apply*) [1]

Online Learning Platform or Software	Number of Respondents	Share of Respondents
Alludo	3	1.2%
PowerSchool	122	48.8%
Frontline Professional Growth	91	36.4%
edWeb	78	31.2%
SimpleK12	44	17.6%
Teaching Channel	46	18.4%
ASCD Professional Development Tools	27	10.8%
BetterLesson	23	9.2%
None of the above	35	14.0%
Don't know / Unsure	11	4.4%
Total - Survey Completes	250	100.0%

Note:

[1] As an attention check, I included two “red herring” answer options in Q2, BirchPD and Dolphyn Learning. Respondents who selected either of those red herring answer options were terminated from the survey. Of the 264 respondents who answered Q2, 14 selected BirchPD or Dolphyn Learning.

Exhibit 4
Brand Awareness Study
Unaided Awareness Question
Open-Ended Responses
(N = 180)^[1]
Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

Respondent	ID	Response	Mentioned “Alludo”? ^[2]
	201	There are brands like NCTM for me personally	No
		I don't engage in many online courses. I prefer hands-on, in-classroom graduate courses with practical applications for my teaching.	No
	203		No
	206	I use google to ask my educator questions.	No
	207	Canva, blackboard, udemy,	No
	209	Coursera, Udemy, Skillshare, edX, Udacity	No
	219	Learner's edge	No
	220	Google	No
	221	NWEA, NEE	No
	223	Edmentum NWEA CANVAS GOOGLE CLASSROOM	No
	224	Sunshine standards Core education	No
		There were on line courses I took through Texas A and M for teachers that were free for getting professional development credit.	No
	229		No
	232	Power school Google You tube	No
	235	Canvas	No
	237	Idaho state university courses	No
	239	Scholastic, ixl	No
	242	Capterra, Absorb, edX, Coursera, Skillshare, Udemy, Khan	No
	246	Carnageige learning	No
	247	Chegg	No
	248	Khan academy	No
	249	Inverse, learnoco, envision, grades, kahoot	No
	250	google	No
	252	Loom, google classroom, zoom, Google meets	No
		Educators can meet their skillset by taking online courses that help them hone their skills and improve their pedagogy. Online exercises can help teachers as they try out and practice the new skills and tips they are learning. Some learning platforms that provide a catalog of professional development include Brainspring, udemy, and skillshare.	No
	253		No
	256	Fiddlers	No
	259	Infinitec	No
	265	IXL	No
	266	Virtual Free state	No
	272	Google classroom	No
	301	Teacher Created Resources	No
	304	BER, GCN	No

Exhibit 4
Brand Awareness Study
Unaided Awareness Question
Open-Ended Responses
(N = 180)^[1]
Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

Respondent	ID	Response	Mentioned “Alludo”? ^[2]
	305	Canvas Canva Quizzes Microsoft	No
	311	Near pod Pear deck Common lit Houghton Mifflin court	No
	333	Edgenuity	No
	334	Hereff Jones	No
	335	pearson, class dojo	No
		Nothing specific comes to mind other than universities which have a variety of coursework related to education and offer some of it	
	338	virtually	No
	339	Arkansas Ideas	No
	340	Aim Pathways, RESA, Walden University	No
	342	Kahn academy I excel	No
	346	Ted talks KET	No
	347	Euphoria	No
	348	Caterpillar	No
		The first thing that comes to mind is Everfi. I know it's not about bettering us as teachers but it does help us provide tools for students	
	349	to learn about managing their money.	No
	350	I think of coursera, edulatate, and quizlet to help	No
	351	College Board	No
	353	The best one is the lastinger learning center for literacy through	No
	357	Khan Academy, College Board, IXL	No
	360	Apex, Edmentum	No
	361	Nothing	No
	362	GCN	No
	364	none	No
	368	UDEMAY	No
	369	Canvas, Google Classroom, Coursera, Khan Academy	No
	371	Pearson	No
		To be honest, I take the classes but I don't pay attention to the platform or software. The most recent professional development	
	376	that I took online was through the Ohio Department of Education.	No
	378	I am a PE teacher-I dont utilize software during my classes	No
	379	Google Microsoft Study.com TPT	No
	381	Learners choice	No
	383	Keenan	No
	384	Skillshare Open Learning	No
	385	Zoom Canvas	No
	387	Google class room' Google Meet	No

Exhibit 4
Brand Awareness Study
Unaided Awareness Question
Open-Ended Responses
(N = 180)^[1]
Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

Respondent	ID	Response	Mentioned “Alludo”? ^[2]
	389	Lexia freckles my onn	No
	390	Udemy, Teachable, kaijabi,	No
	391	Safe schools	No
	392	greenbush is what we use at our school GCN traininng about bullying and discimantion on job place. In addtion how to deal with bbullying. Wealso have youtube that helps with lesson plans	No
	393	Reinassissance	No
	398	Concordia university	No
	400	Frontline	No
	403	Frontline	No
	405	Lead forward and Region 13 I have taken several courses using the Edith-Winthrop database and	No
	407	I have been more than happy with their instructional delivery.	No
	409	I can't think of any right now	No
	411	Paper.co IXL	No
	414	Abeka	No
	415	Iris center Council for Exceptional Children	No
	417	Beess portal	No
	423	coursera	No
	428	google classroom class dojo	No
	429	Educere I have taken some professional development through edweb and	No
	430	scope	No
	433	GCN	No
	440	Google Kahn	No
	443	Ixk Amplify Eureka	No
	445	North Tier	No
	446	Udemy	No
	447	Not sure	No
	448	Google Classroom Kahoot Flipgrid IXL IReady I use my local regional office, online math symposiums, and there	No
	450	are usually big high schools that put on pd training	No
	455	iReady, Aspire	No
	459	IXL ABCYA PSBKIDS Google Classroom	No
	465	Learning care	No
	468	Coursera	No
	469	Pearson	No

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(N = 180)^[1]

Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

Respondent ID	Response	Mentioned “Alludo”? ^[2]
471	I can't think of any! I haven't been employed by a school that made online PD available. The closest I can think was the PA Teacher Induction I participated in last year, where educators at the top level taught month-long modules to new teachers all over the state. (This is through PDE.) I found some of this content helpful to me in my classroom.	No
473	Thinking about online learning platforms or software, I cannot think of any learning platforms or software that can provide a catalog of such courses for educators.	No
475	OLAC	No
477	Duolingo 99math Prodigy Canvas Readworks	No
482	Discovery	No
483	Google Microsoft Khan Academy	No
486	Schoology	No
497	I have taken courses with google, curriculum engine, amplify science, ready gen reading, and envisions math. This has been in the past 2 years.	No
564	none	No
565	Automatically assigned from school board classes Coursework, Skillshare are just a few that have courses for teaching that provide a certificate at the end.	No
570		No
573	Kahn Academy	No
574	Within my school district,, we use a system for professional development education called MYPLN (which stands for my professional learning network). It does include videos, interactive exercises, and quizzes. I don't know if my school district created this or purchase this classes are created by school district employees as far as I can tell.	No
577	The university of Maryland advertises online courses. A lot of cyber security online courses are advertised nowadays.	No
578	Regio 10	No
579	They can take professional deceomeny courses online as well as attending trainings.	No
580	Coursera	No
581	Teachers pay teachers	No
586	I think online services are good I also graduated from online school so I learned a lot online you can get a lot of information from online	No
588	Icev	No

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(N = 180)^[1]
Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

Respondent	ID	Response	Mentioned “Alludo”? ^[2]
	589	None came to mind	No
	590	Classical U NCCAT	No
	594	University of Pheonix,	No
	596	Us math recovery	No
	601	HHM	No
	603	Ablenet u Kaplan All I can think of at this moment is Scholastic. I'm sure there are others, but I jus am drawing a blank.	No
	607		
		Math Teachers and Associates New York State University	
	608	Teachers Pay Teachers	No
	609	OG training by Brainspring Ted talks	No
	611	Teachers academy Study island iready Canvas Google classroom IXL Khan Academy	No
	615		
	617	Schoology	No
	618	Cast books Free learning Education browser Kids excel today	No
	619	Know4be Vector Frontline	No
	620	Google classroom	No
	621	Beacon	No
	625	Coursera, Khan Academy	No
	626	Open Physed	No
	629	CHAMPS	No
	631	Edweek, GLR, KDP, The Teaching Channel	No
	633	Canvas, Schoology, Google Classroom	No
	635	Blackboard is the one that comes to mind	No
	664	Zoom the only ones I am aware of are established academic institutes of	No
	665	which there are many,	No
	666	The Friday institute	No
	672	google	No
	673	Google Crome	No
	674	Schoology Renweb canvas facts	No
	675	Education now	No
	676	Ixl.	No
	677	canvas google classroom	No
	682	Duolingo, Masterclass, Department of Education site	No
	686	Maxie, the, wr	No
	687	Nearpod	No

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(N = 180)^[1]
Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

Respondent	ID	Response	Mentioned “Alludo”? ^[2]
	688	Canvas, teacherspayteachers, Khan academy	No
	689	Google, zoom, brightspace	No
	691	SEL, Second Step, Khan Academy, Apex, Speak now	No
	695	Canvas, Blackboard, Desire2Learn	No
	700	ABCMouse	No
	706	Udemy, Mindvalley Benchmark learning, lexia learning, dreambox, zearn, PDs for different subjects or teaching strategies	No
	707	Houghton-Mifflin, Southwest	No
	728	Fishtank	No
	744	Canvas Google classroom	No
	745	Unsure Safe schools Online classes at community colleges and universities	No
	747	Professional development trainings in and out of your school system	No
	757	Idk learning Canva Primary ilm	No
	763	Coursera Parasharp	No
	766	Ed Web	No
	776	Khan Academy	No
	778	Khan	No
	789	McGrawhill IXL Arkansas ideas is used in Arkansas for teachers to watch videos and participate in quizzes and other online platforms to learn new things about the school districts and about the states laws. This includes fix ethics presentations, Arkansas history, stopping childhood trafficking and more.	No
	799	brainpop,bill nye	No
	808	I'm not sure	No
	827	Harcourt. Hill & McGraw	No
	830	Texas pay teachers.	No
	833	Redwoods Institute	No
	844	Kamba Tadpoles Home Links IXL	No
	851	Youtube The online education trainings I received is soundbar, letters, and gogardium. I think all of these are good programs for helping educators in the classroom.	No
	928	Khan Academy Peterson University	No
	1000	Google classroom, class dojo	No
	1004	Reflex, IXL, Ted Talks, Kahn Acadamy, Fundations	No

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Brand Awareness Study
Unaided Awareness Question
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(N = 180)^[1]
Q1: [...]

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (*Please be as specific as possible.*)

Respondent	ID	Response	Mentioned “Alludo”? ^[2]
	1005	NYS Early Childhood Teacher Training Khan Academy	No

Notes:

[1] 70 respondents selected “Don’t know / Unsure” in response to Q1 and are excluded from this exhibit.

[2] Two coders who were blind to the purpose of the study independently categorized whether each open-ended response mentioned “Alludo.”

APPENDIX A

Curriculum Vitae

JOEL HOWARD STECKEL
New York University
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New York, NY 10012-1126
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EDUCATION

UNIVERSITY OF PENNSYLVANIA, THE WHARTON SCHOOL

Doctor of Philosophy Degree (Marketing/Statistics) awarded, May 1982.
Dissertation Title: "A Game Theoretic and Experimental Approach to the Group Choice Phenomenon in Organizational Buying Behavior;" Professor Yoram Wind, advisor.

Master of Arts Degree (Statistics) awarded May 1980.

Master of Business Administration Degree (Management Science) awarded with Distinction, May 1979.

Elected to Beta Gamma Sigma, May 1979.

COLUMBIA UNIVERSITY

Bachelor of Arts (Mathematics) awarded Summa Cum Laude, May 1977.

Elected to Phi Beta Kappa, May 1977.

ACADEMIC POSITIONS

Visiting Scholar, University of Pennsylvania Carey Law School, September 1 2022 – August 2023.

Vice Dean for Doctoral Education, Stern School of Business, New York University, August 2012-August 2021.

Accounting Department, Acting Chairperson, Stern School of Business, August 2016 – August 2019.

Director PhD Programs, Stern School of Business, New York University, May 2007-July 2012.

Marketing Department Chairperson, Stern School of Business, New York University, July 1998-June 2004.

Professor and Associate Professor, Stern School of Business, New York University, January 1989 - present. Taught courses in Business Strategy, Marketing Management, Marketing Research, Corporate Reputation and Branding, Models of Pricing and Promotion, Field Studies in the New Economy, Marketing Engineering, and Analytic Marketing for Management Consulting. Also

taught Doctoral Seminars in Mathematical Models in Marketing and Behavioral Research Methods.

Visiting Professor, Wharton School, University of Pennsylvania, January 1995 - December 1995. Taught Core Marketing course.

Visiting Professor, Escola de Pós-Graduação em Ciências Económicas e Empresariais, Universidade Católica Portuguesa, May - June 1992, May - June 1993. Taught Industrial Marketing and Marketing Strategy.

Associate Professor and Assistant Professor, Graduate School of Business, Columbia University, July 1981 - December 1988. Taught MBA-level courses in Industrial Marketing, Marketing Planning, and Marketing Research. Taught three Ph.D.-level Marketing Seminars and Applied Multivariate Statistics.

Visiting Associate Professor, School of Organization and Management, Yale University, September - December 1988. Taught graduate course in Marketing Strategy.

Visiting Assistant and Associate Professor, Graduate School of Management, University of California at Los Angeles, July 1984 - June 1985, January - March 1987. Taught Advanced Marketing Management, Marketing Research, and Strategic Marketing Planning.

Assistant Instructor, Department of Statistics, University of Pennsylvania, July 1979 - June 1980. Assisted in undergraduate and MBA-level courses in Statistics. Taught undergraduate course in Calculus.

Teaching Assistant, Department of Mathematics, Columbia University, September 1976 - May 1977. Assisted in courses in Number Theory and Differential Equations.

PROFESSIONAL INTERESTS

Marketing Strategy and Marketing Research. In particular, marketing research methodology, marketing and branding strategies, digital marketing, legal aspects of marketing, and managerial decision making.

PUBLICATIONS

Books

Legal Aspects of Marketing Theory (ed. with J. Gersen), New York: Cambridge University Press, 2023.

Shift Ahead: How the Best Companies Stay Relevant in a Changing World (with A. Adamson), New York: AMACOM, 2018.

Marketing Research (with D. Lehmann and S. Gupta), Boston: Addison-Wesley Longman, 1998.

Analysis for Strategic Marketing (with V. Rao), Boston: Addison-Wesley Longman, 1998.

The New Science of Marketing: State of the Art Tools for Anticipating and Tracking the Market Forces that will Shape Your Company's Future (with V. Rao), Chicago: Irwin Professional Publishers, 1995.

Journal Articles

“Incorporating Uncertainty in Trademark Surveys: Do Respondents Really Know What They Are Talking About?,” (with B. Beebe, R. Germano, and C. Sprigman), The Trademark Reporter, Forthcoming.

“Consumer Uncertainty in Trademark Law,” (with B. Beebe, R. Germano, and C. Sprigman), Emory Law Journal, Vol. 72, Issue 3, 2023, 487-546.

“Clearing Up Some Confusion about Dilution: A Reply to Hal Poret,” The Trademark Reporter, Vol. 112, 2022, 684ff.

“The Science of Proving Trademark Dilution,” (with B. Beebe, R. Germano, and C. Sprigman), The Trademark Reporter, Vol. 110, November-December 2019.

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“Behavioral Reasons for New Product Failure: Does Overconfidence Induce Over-forecasts?” (with D. Markovitch, A/ Michaut-Denizeau, D. Philip, and W. M. Tracy), Journal of Product Innovation Management, Vol. 32, No. 5, September 2015.

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“The Role of Consumer Surveys in Trademark Infringement: Evidence From the Federal Courts,” (with R. Bird), University of Pennsylvania Journal of Business Law, Vol. 14, Issue 4, Summer 2012, 1013-1054.

“Do Initial Stock Price Reactions Provide a Good Measurement Stick for Marketing Strategies? The Case of Major New Product Introductions in the US” (with D. Markovich), European Journal of Marketing, Vol. 46, Iss. 3, 2012, 406-421.

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“A Multiple Ideal Point Model: Capturing Multiple Preference Effects from within an Ideal Point Framework,” (with J. Lee and K. Sudhir), Journal of Marketing Research, Vol. 39, No. 1, February 2002.

“2001: A Marketing Odyssey,” (with E. Brody), Vol. 20, No. 4, Marketing Science, Fall 2001.

“Consumer Strategies for Purchasing Assortments within a Single Product Class,” (with Jack K.H. Lee), Journal of Retailing, Vol. 75, No. 3, Fall 1999.

“The Max-Min-Min Principle of Product Differentiation,” (with A. Ansari and N. Economides), Journal of Regional Science, May 1998.

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“Explanations for Successful and Unsuccessful Marketing Decisions: The Decision Maker’s Perspective” (with M.T. Curren and V.S. Folkes), Journal of Marketing, Vol. 56, No. 2, April 1992.

“Locally Rational Decision Making: The Distracting Effect of Information on Managerial Performance” (with R. Glazer and R. Winer), Management Science, Vol. 38, No. 2, February 1992.

“Prospects and Problems in Modeling Group Decisions” (with K.P. Corfman, D.J. Curry, S. Gupta, and J. Shanteau), Marketing Letters, Vol. 2, No. 3, July 1991.

“A Stochastic Multidimensional Scaling Methodology for the Empirical Determination of Convex Indifference Curves in Consumer Preference/Choice Analysis” (with W.S. DeSarbo and K. Jedidi), Psychometrika, Vol. 56, No. 2, June 1991.

“A Polarization Model for Describing Group Preferences” (with V. Rao), Journal of Consumer Research, Vol. 18, No. 1, June 1991.

“On the Creation of Acceptable Conjoint Analysis Experimental Designs,” (with W.S. DeSarbo and V. Mahajan), Decision Sciences, Vol. 22, No. 2, Spring 1991.

“Longitudinal Patterns of Group Decisions: An Exploratory Analysis” (with K.P. Corfman and D.R. Lehmann), Multivariate Behavioral Research, Vol. 25, No. 3, July 1990.

“Investing in the Stock Market: Statistical Pooling of Individual Preference Judgments,” (with N. Capon), Annals of Operations Research, Vol. 23, 1990.

“Judgmental Forecasts of Key Marketing Variables: Rational vs. Adaptive Expectations” (with R. Glazer and R. Winer), International Journal of Forecasting, Vol. 6, No. 3, July 1990.

“Committee Decision Making in Organizations: An Experimental Test of the Core,” Decision Sciences, Vol. 21, No. 1, Winter 1990.

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“Estimating Probabilistic Choice Models from Sparse Data: A Method and an Application to Groups” (with D.R. Lehmann and K. Corfman), Psychological Bulletin, Vol. 95, No. 1, January 1988.

“A Friction Model for Describing and Forecasting Price Changes” (with W.S. DeSarbo, V.R. Rao, Y.J. Wind and R. Colombo), Marketing Science, Vol. 6, No. 4, Fall 1987.

“Group Process and Decision Performance in a Simulated Marketing Environment” (with R. Glazer and R. Winer), Journal of Business Research, Vol. 15, No. 6, December 1987.

“Effective Advertising in Industrial Supplier Directories” (with D.R. Lehmann), Industrial Marketing Management, Vol. 15, No. 2, April 1985.

Book Chapters

“Conducting Experiments in Litigation: An Academic Perspective”, in Handbook of Marketing Analytics: Methods and Application in Marketing Management, Public Policy, and Litigation Support, 2nd ed., N. Mizik and D. Hanssens (eds.), Springfield MA: Edward Elgar Publishing, Forthcoming.

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“Dynamic Decision Making in Marketing Channels”, with S. Gupta, and A. Banerji), in Experimental Business Research, A. Rapoport and R. Zwick (eds.), Boston, MA: Kluwer Academic Publishers, 2002.

Refereed Proceedings

“PIONEER: Decision Support for Industrial Product Planning” in Efficiency and Effectiveness in Marketing, Proceedings of the American Marketing Association Educator's Conference, Vol. 54, 1988, G.L. Frazier and C.A. Ingene, eds., Chicago.

“Mathematical Approaches to the Study of Power: A Critical Review” in Advances in Consumer Research, Vol. XII, 1985, E. Hirschman and M. Holbrook, eds., Provo, UT.

“On Obtaining Measures from Ranks” in An Assessment of Marketing Thought and Practice, Proceedings of the American Marketing Association Educator's Conference, Vol. 48, B.J. Walker, ed., 1982, Chicago.

Other

“Don Lehmann: My Reflections On A Time Gone By,” essay in the Legends of Marketing Series.

“Find the Open Door: A Reflection” in “Reflections of Eminent Marketing Scholars,” Foundations and Trends in Marketing, Special Issue, 2022, ed. by Dawn Iacobucci, Boston-Delft: Now Publishers.

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“New Survey Methods May Assess TM Dilution with More Detail” (with R. Befurt and A. Cai), August 14, 2020, Law 360, https://www.analysisgroup.com/globalassets/insights/publishing/2020_survey_methods_assess_tm_dilution_detail.pdf

“How Smart Marketers Gauge the Future to Shift Ahead of Consumer Needs” (with A. Adamson), American Management Association Playbook, December 18, 2017, <http://playbook.amanet.org/training-articles-marketers-shift-ahead-consumer-needs/>

“What Consumers Really Think About Reference Price Labels” (with R. Kirk Fair, K. Shampier, L. O’Laughlin, and J. Shea), Law 360, March 21, 2017, https://www.analysisgroup.com/globalassets/content/insights/publishing/law360_reference_price_labels.pdf

“Paul Green: The Hulk Hogan of Marketing,” essay in the Legends of Marketing Series.

“Jerry Wind: A Man Ahead of His Time,” essay in the Legends of Marketing Series.

“Is it Worth Anything?: Using Surveys in Intellectual Property Cases?,” <https://www.analysisgroup.com/Insights/publishing/is-it-worth-anything--using-surveys-in-intellectual-property-cases>

“Forecasting Online Shopping,” Stern Business, Fall/Winter 2000, pp. 22-27.

“Method to Their Madness,” The Industry Standard, August 7, 2000.

Book review of The Application of Regression Analysis by D.R. Wittink, Journal of Marketing Research, Vol. 26, No. 4, November 1989.

Co-author (with many others) of The Statistics Problem Solver, Research and Education Association, New York, 1978.

CONFERENCE PRESENTATIONS

“Innovative Methodologies on Contemporary Trademark Law,” (with B. Beebe, R. Germano, and C. Sprigman), CREATe Trade Marks Seminar, University of Glasgow, June 2022.

“Consumer Uncertainty in Trademark Law: An Empirical Investigation,” (with B. Beebe, R. Germano, and C. Sprigman), 2021 Intellectual Property Scholars Conference, Cardozo Law School, August 2021.

“Trademark Law’s Shallow Empiricism: An Experimental and Theoretical Investigation,” (with B. Beebe, R. Germano, and C. Sprigman), Tri State Region IP Workshop, January 2021.

“The Evolving Business Ph.D.,” The Third Annual Global PhD Colloquium,” Fordham University, April 2019.

“Testing for Trademark Dilution in the Court and Lab,” (with B. Beebe, R. Germano, and C. Sprigman), Munich Summer Institute, June 2018.

“Trademark Dilution: Searching for the Elusive Unicorn,” Conference on Empirical Legal Studies, Cornell University, October 2017.

“Measuring Trademark Dilution”, Conference on Empirical Analysis of Intellectual Property, NYU Law School, October 2014.

“Using Surveys in Intellectual Property Cases: What’s the Damage?,” AIPLA Spring Meeting, May 2013, Seattle WA.

“Trademark Dilution: An Elusive Concept in the Law,” Conference on Brands and Branding in Law, Accounting, and Marketing Kanan Flagler School, University of North Caroline, April 2012

“The Role of Consumer Surveys in Trademark Infringement Cases: Evidence from the Federal Courts,” (with R. Bird), AMA Summer Educator’s Conference, August 2010, Boston.

“Global Market Share Dynamics: Winners and Losers in a Tumultuous World,” (with P. Golder and S. Chang), INFORMS Marketing Science Conference, June 2010, Cologne, Germany.

“Use and Abuse of Consumer Perception Research in Antitrust and Advertising Cases,” ABA Antitrust Section Spring Meeting, March 2009, Washington, DC.

“New Product Development: The Stock Market as Crystal Ball,” (with D. Markovich), INFORMS Marketing Science Conference, Atlanta, GA., June 2005.

“Modeling Credit Card Usage Behavior: Where is my VISA and Should I Use It?,” (with Y. Chen), INFORMS Marketing Science Conference, College Park, Md., June 2003.

“Using Capital Markets as Market Intelligence: Evidence from the Pharmaceutical Industry,” (with D. Markovich and B. Yeung), INFORMS Marketing Science Conference, College Park, Md., June 2003.

“Using Capital Markets as Market Intelligence: Evidence from the Pharmaceutical Industry,” (with D. Markovich and B. Yeung), Share Price Accuracy and Transition Economies Conference, U. of Mich. Law School, Ann Arbor, Mi., May 2003.

"Modeling Internet Site Visit Behavior," (with E. Bradlow and O. Sak), Joint Statistical Meetings, Indianapolis, August 2000.

"Consumer Strategies for Purchasing Assortments within a Single Product Class," (with Jack K.H. Lee), INFORMS Fall Conference, Philadelphia, November 1999.

"When Do Purchase Intentions Predict Sales?" (with V. Morwitz and A. Gupta), AMA Advanced Research Techniques Forum, Santa Fe, NM, June 1999.

"Modeling New Product Preannouncements as a Signaling Game," (with H. Jung), University of Mainz Conference on Competition in Marketing, Germany, June 1999.

"A Multiple Idea Point Model: Capturing Multiple Preference Effects from within an Ideal Point Framework," (with J. Lee), Joint Statistical Meetings, Dallas, TX, Aug. 1998.

"Modeling New Product Preannouncements as a Signaling Game," (with H. Jung), INFORMS Marketing Science Conference, Fontainbleau, France, July 1998.

"Dynamic Decision-Making in Marketing Channels: Traditional Systems, Quick Response, and POS Information," (with S. Gupta and A. Banerji), NYU Conference on Managerial Cognition, May 1998.

"When Do Purchase Intentions Predict Sales?" (with V. Morwitz and A. Gupta), INFORMS International Meetings, Barcelona, July 1997.

"Mental Models in Competitive Decision Making: A Blessing and A Curse," Conference on Competitive Decision Making, Charleston, SC, June 1997.

"When Do Purchase Intentions Predict Sales?" (with V. Morwitz and A. Gupta), INFORMS Marketing Science Conference, Berkeley, March 1997.

"Model Adequacy versus Model Comparison: Is the 'Best' Model Any 'Good'?", " (with A. Ansari and P. Manchanda), INFORMS Marketing Science Conference, Berkeley, March 1997.

"Dynamic Decision-Making in Marketing Channels: Traditional Systems, Quick Response, and POS Information," (with S. Gupta and A. Banerji), First Conference in Retailing and Service Sciences, Banff, 1994.

"Dynamic Decision-Making in Marketing Channels: Traditional Systems, Quick Response, and POS Information," (with S. Gupta and A. Banerji), Behavioral Decision Research in Management Conference, Boston, 1994.

"Modeling Consideration Set Formation: The Role of Uncertainty," (with B. Buchanan and S. Sen), TIMS Marketing Science Conference, Tucson, 1994.

"A Cross-Cultural Analysis of Price Conjectures to Environmental Changes," (with V. Rao), TIMS Marketing Science Conference, St. Louis, 1993.

"Decision-Making in a Dynamic Distribution Channel Environment," (with S. Gupta and A. Banerji), TIMS Marketing Science Conference, St. Louis, 1993.

“Cross Validating Regression Models in Marketing Research,” (with W. Vanhonacker), TIMS Marketing Science Conference, London, 1992.

“The Influence of Stock Price on Marketing Strategy,” (with D. Gautschi and D. Sabavala), TIMS Marketing Science Conference, Wilmington, DE, 1991.

“A Polarization Model for Describing Group Preferences” (with V. Rao), ORSA/TIMS National Fall Meetings, Philadelphia, 1990.

“A Polarization Model for Describing Group Preference,” (with V. Rao), Behavioral Decision Research in Management Conference, Philadelphia, 1990.

“Conflict Resolution and Repeat Buying” (with S. Gupta), TIMS Marketing Science Conference, Champaign, Ill., 1990.

“Variety Seeking at the Group Level” (with S. Gupta), Association for Consumer Research Fall Meetings, New Orleans, 1989.

“On Using Attraction Models to Allocate Resources in a Competitive Environment,” TIMS Marketing Science Conference, Durham, NC, 1989.

“Multidimensional Scaling with Convex Preferences” (with W.S. DeSarbo), ORSA/TIMS National Fall Meetings, St. Louis, 1987.

“A Social Comparison Model for Describing Group Preference Evaluations” (with V. Rao), TIMS Marketing Science Conference, Jouy-en-Josas, France, 1987.

“The Day the Earth Stood Still,” Association for Consumer Research Fall Meetings, Toronto, 1986.

“A Friction Model for Describing and Forecasting Price Movements” (with W. DeSarbo, V. Rao, Y. Wind, and R. Colombo), ORSA/TIMS National Fall Meetings, Miami Beach, 1986.

“An Eigenvalue Method for Measuring Consumer Preferences” (with E. Greenleaf and R. Stinerock), TIMS Marketing Science Conference, Dallas, 1986.

“Creating Conjoint Analysis Experimental Designs without Infeasible Stimuli” (with W. DeSarbo and V. Mahajan), TIMS Marketing Science Conference, Dallas, 1986.

“The Mediating Role of Information in Marketing Managers' Decisions” (with R. Glazer and R. Winer), TIMS Marketing Science Conference, Dallas, 1986.

“Incorporating Interdependencies of Utility Functions into Models of Bargaining” (with S. Gupta), ORSA/TIMS National Fall Meetings, Atlanta, 1985.

“The Formation of Key Marketing Variable Expectations” (with R. Glazer and R. Winer), ORSA/TIMS National Fall Meetings, Atlanta, 1985.

“Does the Nash Equilibrium Really Describe Competitive Behavior?: The Case of Cigarette Advertising,” TIMS Marketing Science Conference, Nashville, 1985.

“A Heterogeneous Conditional Logit Model of Choice” (with W. Vanhonacker), ORSA/TIMS National Fall Meetings, Dallas, 1984.

“Using a ‘Robust’ Response Function to Allocate Resources in a Competitive Environment,” TIMS Marketing Science Conference, Chicago, 1984.

“Longitudinal Models of Group Choice Behavior,” (with D. Lehmann and K. Corfman), ORSA/TIMS National Fall Meetings, Orlando, 1983.

“Considerations of Optimal Design of New Task Industrial Products,” ORSA/TIMS National Fall Meetings, San Diego, 1982.

“Game Theoretic Choice Models in Organizational Buying Behavior,” TIMS Special Interest Conference in Marketing Measurement and Analysis, Philadelphia, 1982.

OTHER RESEARCH IN PROGRESS

Neuroscience Methods of Measuring Trademark Infringement

Incentive Compatibility in Trademark Surveys

Getting Product Disclaimers Noticed

Marketing Research in the Courtroom vs. the Boardroom: What are the Differences and Do They Matter? (with R. Bird)

The Impact of Trademark Litigation Outcomes on Brand Equity and Marketing Decision Making

Modeling the Tradeoffs between Marketing Research and Flexible Manufacturing.

INVITED SEMINARS

Columbia University	Spring 1991, Summer 1994
Cornell University	Fall 1983, Spring 1989
Georgetown University	Fall 2006
Pennsylvania State University	Fall 1996, Fall 2006
Rutgers University	Spring 1994
Temple University	Fall 1995
University of California, Berkeley	Spring 1990
University of California, Los Angeles	Spring 1985, Spring 1996
University of California, San Diego	Fall 2003
University of Florida	Spring 1992
University of Mainz, Germany	Summer 1998
University of Michigan	Spring 1993

University of Pennsylvania	Spring 1992, Spring 1995, Spring 1998
University of Southern California	Spring 1987
Washington University, St. Louis	Spring 2003

EDITORIAL SERVICE

Editorships

Co-Editor-in-Chief, *Marketing Letters*, July 2010 – March 2017

Guest editor, special section of Marketing Science on the history of marketing science theory and practice, 2001.

Consulting editor in marketing, Addison-Wesley Longman Academic Publishers, Boston, MA, 1993-1999.

Guest editor, special issue of Journal of Retailing on the use of panel and point of sale data, 1992.

Other

Member of Advisory Board (current), Marketing Letters.

Have served on editorial board or as ad-hoc referee for Journal of Marketing, Journal of Marketing Research, Stanford Law Review, Management Science, Marketing Science, Journal of Consumer Research, Journal of Retailing and Consumer Services, Manufacturing and Service Operations Management, Decision Sciences, Journal of Business and Economic Statistics, Journal of Econometrics, Journal of Retailing, Strategic Information Systems, Review of Marketing Science, Corporate Reputation Review, and Journal of Business Research.

SERVICE

Dissertation Committees Chaired

Joseph Pancras (co-chair)	(Marketing - New York University)
Sergio Meza (co-chair)	(Marketing – New York University)
Dmitri Markovich	(Marketing – New York University)
Heonsoo Jung	(Marketing - New York University)
Jack Lee	(Marketing - New York University)
Asim Ansari (co-chair)	(Marketing - New York University)
Shahana Sen (co-chair)	(Marketing - New York University)

Dissertation Committees Served on

Tingting Fan (Marketing – New York University)
Kei-Wei Huang (Information Systems – New York University)

Sherrif Nassir (Marketing – New York University)
Jane Gu (Marketing – New York University)
Orkun Sak (Marketing – University of Pennsylvania)
Atanu Sinha (Marketing - New York University)
Louis Choi (Marketing - Columbia University)
Sunder Narayanan (Marketing - Columbia University)
Carol Rhodes (Ed. Psych. - Columbia University)
Rita Wheat (Marketing - Columbia University)
Robert Stinerock (Marketing - Columbia University)
Bruce Buchanan (Business Economics - Columbia University)
Chen Young Chang (Marketing - University of Pennsylvania)

Other Discipline Related Service

Chairperson, Marketing Committee, INFORMS, January 2006 – June 2010.
Past President, INFORMS Society on Marketing Science, January 2004 – December 2005.
Founding President, INFORMS Society on Marketing Science, January 2003 – December 2003.
President, INFORMS College on Marketing, January 2002 – December 2002.
President Elect, INFORMS College on Marketing, January 2000- December 2001.
Secretary-Treasurer, INFORMS College on Marketing, January 1998-December 1999.
Association of Consumer Research, Annual Program Committee, 1999.
Co-Organizer of 1996 Conference on Consumer Choice and Decision Making, Arden House,
Harriman, New York, June 1996.
Organized Marketing Sessions at Fall 1989 TIMS/ORSA Joint National Meetings, New York,
October 1989.

Other University Related Service

Member, NYU Doctoral Affairs Committee, September 2017 – August 2021.
Member, Research Resources Committee, Stern School of Business, September 2009 – August 2021.
Chair, Statistical and Quantitative Reasoning Task Force, Stern School of Business, September 2005 – August 2007.
Member, Specialization Committee, Stern School of Business, September 2004 - ff.
Member, PhD Oversight Committee, Stern School of Business, January 2006 – May 2007.
Member, Executive Committee, Digital Economy Initiative, Stern School of Business, January 2000 – August 2002.
Member, Board of Directors, Center for Information Intensive Organizations, Stern School of Business, September 1998 – December 1999.

Member of MBA Committee, Stern School of Business, New York University, 1989-December 1998. Committee was responsible for supervising redesign of MBA programs in 1991 and 1995, Chairman September 1997-August 1998.

Member of Stern MBA Curriculum Review Committee, September 1997-December 1998. Committee redesigned MBA Core.

Member of Stern School Committee on Improving Consulting Activities, July 1998-December 1998.

Member of Building Committee, Stern School of Business, New York University, 1990-1992.

Member of Research Committee, Stern School of Business, New York University, 1990-1991.

Elected member of Columbia University Senate. Served on Budget Review and Alumni Relations Committees, 1986-1988.

AWARDS

Awarded the J. Parker Bursk Memorial Prize as the outstanding student participating in the Department of Statistics, University of Pennsylvania, 1979.

Dissertation was awarded Honorable Mention in the 1982 American Marketing Association Dissertation Competition.

Dissertation was named Winner of the 1983 Academy of Marketing Science Dissertation Competition.

Invited speaker at the J. Parker Bursk Memorial Prize Luncheon, Department of Statistics, University of Pennsylvania, 1992.

Invited speaker at American Marketing Association Doctoral Consortium, University of Southern California, 1999.

Cited for outstanding editorial support, Fordham University Pricing Center, Sept. 2002.

Named one of the inaugural winners of the Best Reviewer Award for the *Journal of Retailing*, 2003.

Work recognized by West publishing as one of the outstanding 2012 law review articles on Intellectual Property.

Work recognized with the Highly Commended Paper Award at the Literati Network Awards for Excellence 2013.

SELECTED CONSULTING AND OTHER PROFESSIONAL ACTIVITIES

AOL MovieFone, Inc., New York, NY. Performed general consulting on analyzing caller data for telephone movie information service; Consulted as expert in conjunction with damage assessment in legal proceedings.

Citicorp, New York, NY. Built choice model for bank services. Gave lectures on Marketing Strategy to CitiCards executives.

Directions for Decisions, Inc., New York, NY and Jersey City, NJ. Consulted on segmentation study of sports apparel market, designed and implemented “Construction Test”, a concept design decision tool. Performed general consulting on marketing research practice on an ongoing basis.

Federal Trade Commission, Washington, D.C. Served as consultant on branding strategies in antitrust investigation.

J.C. Penney Co., New York, NY. Performed sales-advertising response analysis. Work was done on request for Management Decision Systems, Inc., Weston, MA.

Pfizer Pharmaceuticals, New York, NY. Conducted seminar on conjoint analysis.

SilverBills, Inc., New York, NY. Member board of advisors.

Union Carbide Corporation, Danbury CT. Built econometric model to forecast prices.

Various Expert Witness Engagements. Clients include Amazon, AT&T, Avon, Brother International, Capri Sun, Dyson, Epson, Hershey's, JP Morgan Chase, Gerber Products, Johnson & Johnson, K-Swiss, Mead Johnson, Merck KGAA, Microsoft, Monster Cable, McDonald's, New Balance, Peloton, Playtex, PNC Financial, Proctor & Gamble, Roche, Samsung, Seagate, Sergio Garcia, Sharp, TiVo, Under Armour, Wal-Mart, Warnaco, and various plaintiffs in consumer class actions.

MEMBERSHIPS

American Marketing Association

American Statistical Association

Association for Consumer Research

The Institute for Operations Research and Management Science (INFORMS)

Society for Consumer Psychology

American Association for Public Opinion Research

APPENDIX B

Testimony in the Last Four Years

TESTIMONY IN THE LAST FOUR YEARS

Depositions

Mahindra & Mahindra Ltd. and Mahindra Automotive North America v. FCA US LLC, Case No.: 2:18-CV-12645-GAD-SDD, United States District Court (Eastern District of Michigan); In the Matter of Certain Motorized Vehicles and Components Thereof, Investigation No. 337-TA-1132, United States International Trade Commission, Washington D.C.

Susan Wang, Rene Lee and all others similarly situated, v. StubHub, Inc., Superior Court of the State of California for the County of San Francisco (Case No: CGC-18564120).

Match Group, LLC, v. Bumble Trading Inc., Bumble Holding, LTD., Badoo Trading Limited, Magic Lab Co., Worldwide Vision Limited, Badoo Limited, Badoo Software Limited, Badoo Software Limited, and Badoo Technologies Limited, United States District Court for the District of Texas Waco Division, No. 6:18-CV-00080-ADA.

Brian Gozdenovich, on behalf of himself and all others similarly situated v. AARP, Inc., AARP Services, Inc., AARP Insurance Plan, Unitedhealth Group, Inc. and United Healthcare Insurance Company, United States District Court, District of New Jersey, Case No. 2:18-cv-02788-MCA-MAH.

American Dairy Queen Corporation v. W.B. Mason Co., Inc., United States District Court (District of Minnesota), Civ. Act. No. 0:18-cv-00693-SRM-ECW.

Maglula, LTD. v. Amazon.com, Inc., and Amazon.com Services, LLC (United States District Court For the Eastern District of Virginia, Alexandria Division -Civil Action No.: 1:19-cv-01570-LO-IDD.

Capri Sun GMBH v. American Beverage Corporation, United States District Court for the Southern District of New York; 1:19-cv-1422.

Biologics, Inc. D/B/A Biologics by McKesson Corporation v. OptumRx, Inc., AAA Case No. 01-20-0007-3159 (American Arbitration Association).

Tiffany and Company and Tiffany (NJ) LLC v. Costco Wholesale Corporation, United States District Court, Southern District of New York case number 13 Civ. 1041.

Theta, IP, LLC. v. Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., United States District Court for the Western District of Texas, Waco Division, Civil Action No.: 6:20-cv-00160-ADA.

Eric Fishon and Alicia Pearlman, individually and on behalf of all others similarly situated v. Peloton Interactive, Inc., United States District Court, Southern District of New York, Case No. 1:19-CV-11711-LJL.

Eric Fishon, individually and on behalf of all others similarly situated, v. Premier Nutrition Corporation f/k/a Joint Juice, Inc., Defendant, United States District Court, Northern District of California – San Francisco Division, Case No. 3:16-cv-06980.

Parts ID, LLC (Plaintiff) v. ID Parts LLC, (Defendant), In the United States District Court for the District of Massachusetts, Civil Action No. 1:20-cv-11253.

Zuru LLC and Zuru Inc. (Petitioners), v. Lego Juris A/S (Respondent), United States Patent and Trademark Office Before the Trademark Trial and Appeal Board, Reg. Nos.: 1,018,875 and 2,245,652.

24-7 Bright Star Healthcare, LLC v. Res-Care, Inc. d/b/a BrightSpring Health Services, United States District Court, Northern District of Illinois - Eastern Division, Case No. 1:21-cv-4609.

State of Arizona, *ex rel.* Mark Brnovich, Attorney General, v. Google LLC, Superior Court of the State of Arizona in and for the County of Maricopa, Case No. CV2020-006219.

Adidas America, Inc. and Adidas AG v. Thom Browne Inc., United States District Court, Southern District of New York, Case No. 1:21-CV-05615

Ryan Hardin, et al v. Samsung Electronics Co. Ltd. et al., United States District Court, Eastern District of Texas – Marshall Division, Case No. 2:21-CV-0290-JRG.

U.S. Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation v. Fox News Network, LLC, Superior Court for the State of Delaware, Case No. N21C-03-257 EMD.

State of North Dakota v. United States of America, United States District Court, District of North Dakota – Western Division, Case No. 1:19-cv-150-DMT-ARS.

Chervon (HK) Limited, Chervon North America Inc., v. One World Technologies, Inc., Techtronic Industries Co. Ltd, Homelite Consumer Products, Inc., United States District Court for the District of Delaware, Case No.: 19-1293-LPS-SRF.

Vans. Inc. and VF Outdoor, LLC v. Walmart, Inc.; The Doll Maker, LLC; Trendy Trading, LLC; and ACI International, United States District Court for the District of Central California, Southern Division, Case No. 8:21-cv-01876-DOC-KES.

Arm Ltd. v. Qualcomm Inc., Qualcomm Technologies, Inc., and Nuvia, Inc., United States District Court for the District of Delaware, Case No. 22-1146 (MN).

The State of Texas v. Google LLC, District Court of Victoria County, Texas, 377th Judicial District, Cause No. 22-01-88230-D.

Intuit Inc. v. HRB Tax Group, Inc. and HRB Digital LLC, and HRB Digital LLC v. Intuit Inc., United States District Court, Northern District of California, San Jose Division, Case No. 5:24-cv-00253-BLF.

Trial

Adidas America, Inc. and Adidas AG v. Thom Browne Inc., United States District Court, Southern District of New York, Case No. 1:21-CV-05615.

Parts ID, LLC (Plaintiff) v. ID Parts LLC, (Defendant), In the United States District Court for the District of Massachusetts, Civil Action No. 1:20-cv-11253.

State of North Dakota v. United States of America, United States District Court, District of North Dakota – Western Division, Case No. 1:19-cv-150-DMT-ARS.

Arbitration Hearing

Biologics, Inc. D/B/A Biologics by McKesson Corporation v. OptumRx, Inc., AAA Case No. 01-20-0007-3159 (American Arbitration Association).

Preliminary Injunction Hearing

Danone US, LLC. v. Chobani, LLC., Case Action No. 18 CV 11702, United States District Court (Southern District of New York)

Other Hearings

In the Matter of Distribution of the 2010, 2011, 2012, 2013 Cable Royalty Funds, (Before the Copyright Royalty Judges, Washington D.C.) Docket No. 14-CRB-0010-CD (2010-13)

In the Matter of Certain Motorized Vehicles and Components Thereof, Investigation No. 337-TA-1132, United States International Trade Commission, Washington D.C.

APPENDIX C

FACTS AND DATA CONSIDERED IN FORMING MY OPINIONS

Case Documents

Defendant Cascade Parent Limited's Answer to Plaintiff's First Amended Complaint, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, August 11, 2023.

Defendant Parallels Inc.'s Answer to Plaintiff's First Amended Complaint, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, August 11, 2023.

Plaintiff Alpenspruce Education Solutions Inc.'s Answers and Objections to Defendants' First Set of Interrogatories, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, October 9, 2023.

Plaintiff Alpenspruce Education Solutions Inc.'s Answers and Objections to Defendants' Second Set of Interrogatories, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, July 17, 2024.

Plaintiff's First Amended Complaint, *Alpenspruce Education Solutions Inc. v. Cascade Parent Limited and Parallels Inc.*, Western District of Washington at Seattle, Case No. 2:23-cv-00692-MJP, July 14, 2023.

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ALPEN_0000386

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Keller, Kevin Lane, "Conceptualizing, Measuring, and Managing Customer-Based Brand Equity," *Journal of Marketing*, Vol. 57, No. 1, 1993.

Kugler, Matthew B., and R. Charles Henn Jr., “Internet Surveys in Trademark Cases: Benefits, Challenges, and Solutions,” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, Second Edition, American Bar Association, 2022.

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Simonson, Itamar, and Ran Kivetz, “Demand Effects in Likelihood of Confusion Surveys: The Importance of Marketplace Conditions,” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, First Edition, American Bar Association, 2012.

Publicly Available Materials

Webpages

“10 Best Professional Development Courses for Teachers in 2023,” *Teachers of Tomorrow*, October 30, 2023, available at <https://www.teachersoftomorrow.org/blog/insights/best-professional-development-courses-for-teachers/>.

“15 Top Resources for Teacher Professional Development (Including Free Options!),” *We Are Teachers*, November 30, 2023, available at <https://www.weareteachers.com/professional-development-for-teachers/>.

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https://pro.similarweb.com/#/digitalsuite/websiteanalysis/overview/website-performance/*/999/3m?webSource=Total&key=connectedpd.com, accessed on August 26, 2024.

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APPENDIX D

Brand Awareness Study

APPENDIX D.1

Brand Awareness Study: Screenshots

0%

Thank you for your participation in our study. All your answers will remain confidential. Please try to answer all questions to the best of your ability. We are interested in your opinions and reactions. There are no right or wrong answers and we will not try to sell you anything based on your answers. Please do not consult any outside sources (e.g., internet or phone) while taking the survey.

If you do not know, do not recall, are unsure, or have no opinion, please do not try to guess and simply select the "Don't Know / Unsure" option.

The "Back" button on your browser has been disabled for the duration of the survey. Please do not use it while taking the survey.

If you understand these instructions and agree to participate in this survey, please check this box and click "Continue."

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

Please check the box below if you are human.

I'm not a robot 
reCAPTCHA
Privacy - Terms

0%

Continue »

If you experience any problems with this survey, please email techsupport@researchresults.com

How old are you?
(Select only one option)

60 years or older

50 – 59 years old

40 – 49 years old

30 – 39 years old

18 – 29 years old

Under 18 years old

Prefer not to answer

6%

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

12%

Please indicate your sex:
(Select only one option)

Male

Female

Prefer not to answer

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

In which state do you currently reside?

(Select only one option)

Select one...

None of the above

Continue »

If you experience any problems with this survey, please email techsupport@researchresults.com

Are you employed by...?

(Select all that apply)

- A law firm, legal services organization, or court
- A hospital, medical facility, or doctor's office
- A K-12 school or school district
- A home hardware or power tools manufacturer or retailer
- A marketing, market research, or advertising agency
- An online training or learning software company
- An electronics retailer or manufacturer
- None of the above

Continue »

If you experience any problems with this survey, please email techsupport@researchresults.com

32%

You indicated that you are currently employed by a K-12 school or school district. What is your role?
(Select all that apply)

Support staff (e.g. Counselor, Nurse, Librarian)

Administrator (e.g. Principal, Superintendent, Director)

Maintenance staff (e.g. Groundskeeper, Custodian, Food service worker)

Operation staff (e.g. Security Guard, Bus Driver)

Educator (e.g. Teacher, Teaching Assistant)

None of the above

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

Are any of your family members employed by...?
(Select all that apply)

An electronics retailer or manufacturer

A hospital, medical facility, or doctor's office

A marketing, market research, or advertising agency

A law firm, legal services organization, or court

A K-12 school or school district

An online training or learning software company

A home hardware or power tools manufacturer or retailer

None of the above

Continue »

If you experience any problems with this survey, please email techsupport@researchresults.com

Have you taken any surveys in the last 30 days on any of these topics?

(Select all that apply)

Video games

Home sound systems

Professional development software

Home hardware or power tools

Clothing

Sporting goods or outdoor gear

Cosmetics

None of the above

Continue »

If you experience any problems with this survey, please email techsupport@researchresults.com

57%

People vary in the amount of attention they pay to these kinds of surveys. Some take them seriously and read each question, whereas others go very quickly and barely read the questions at all. If you have read this question carefully, please select "5" below.

(Select only one option)

6 - Very

5

4

3

2

1

0 - Not at all

Other (Please specify)

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

You indicated that you are currently employed as an educator or administrator in a K-12 school or school district.

Please think about the materials and resources you have encountered that can help set, track, and achieve your skill and professional development goals.

On the following screens, you will be asked to answer a few questions about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes. Specifically, the questions will be about online learning platforms or software that provide a catalog of such courses for educators.

Please do not use your browser's "Back" button.

If you don't know an answer to a question or if you don't have an opinion, please don't guess. Simply indicate this in your response by selecting the "Don't know / Unsure" option. There are no right or wrong answers.

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

78%

Please think about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.

These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any?

(Please be as specific as possible.)

Don't know / Unsure

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

85%

Please think about how educators can meet *their own* skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.

These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize?

(Select all that apply)

Teaching Channel
 PowerSchool
 Alludo
 SimpleK12
 edWeb
 Dolphyn Learning
 BirchPD
 ASCD Professional Development Tools
 Frontline Professional Growth
 BetterLesson
 Don't know / Unsure
 None of the above

[Continue »](#)

If you experience any problems with this survey, please email techsupport@researchresults.com

Are you or are you not aware of any lawsuits involving online professional development platforms or software?
(Select only one option)

I am not aware of any lawsuits

I am aware of at least one lawsuit

Don't know / Unsure

Continue »

If you experience any problems with this survey, please email techsupport@researchresults.com

Survey Completed - Thank You

Thank you for your participation. Those are all the questions we have for you today. All of your responses have been successfully recorded in our database, and you are now free to surf the Internet or to close your Web browser altogether. Again, thank you for your time, energy, and participation.

If you experience any problems with this survey, please email techsupport@researchresults.com

APPENDIX D.2

Brand Awareness Study: Script

Programmer Instructions

[PROGRAMMER NOTES IN BOLD CAPS AND IN BRACKETS]

[FOR CLOSED-ENDED QUESTIONS, DO NOT ALLOW RESPONDENT TO CLICK “NEXT” WITHOUT CHOOSING AN ANSWER OPTION. FOR OPEN-ENDED QUESTIONS, DO NOT ALLOW RESPONDENT TO CLICK “NEXT” WITHOUT TYPING IN AN ANSWER OR CHOOSING ANOTHER ANSWER OPTION IF PRESENT.]

[ROTATE ORDER OF YES/NO ANSWERS IN THE FIRST INSTANCE OF A YES/NO QUESTION. USE THE SAME ORDER FOR ALL OTHER YES/NO QUESTIONS. NOTE THAT YES AND NO ARE NOT EXPLICITLY STATED IN THE ANSWER OPTIONS.]

[DISABLE THE BROWSER “BACK” BUTTON]

Introduction and Screening

[NO SURVEY/SECTION TITLES TO BE DISPLAYED TO RESPONDENTS]

[18+ NATIONAL SAMPLE OF 250 TOTAL COMPLETES.]

[SEND SURVEY TO PANEL OF K-12 EDUCATORS AND ADMINISTRATORS; QUOTAS SHOULD BE SET SUCH THAT RESPONDENTS WHO COMPLETE THE SURVEY MATCH THE AGE, GENDER, AND REGION DISTRIBUTION FOR K-12 EDUCATORS AND ADMINISTRATORS ACCORDING TO THE ACS.]

[EACH QUESTION ON A NEW PAGE UNLESS OTHERWISE SPECIFIED]

S0. Digital fingerprinting

S1. Captcha

Thank you for your participation in our study. All your answers will remain confidential. Please try to answer all questions to the best of your ability. We are interested in your opinions and reactions. There are no right or wrong answers and we will not try to sell you anything based on your answers. Please do not consult any outside sources (e.g., internet or phone) while taking the survey.

If you do not know, do not recall, are unsure, or have no opinion, please do not try to guess and simply select the “Don’t Know / Unsure” option.

The “Back” button on your browser has been disabled for the duration of the survey. Please do not use it while taking the survey.

- If you understand these instructions and agree to participate in this survey, please check this box and click “Continue.”

S2. How old are you? (*Select only one option*) [RANDOMIZE BETWEEN THIS ORDER AND REVERSE; KEEP “Prefer not to answer” LAST]

- Under 18 years old [TERMINATE]
- 18 – 29 years old
- 30 – 39 years old
- 40 – 49 years old
- 50 – 59 years old
- 60 years or older
- Prefer not to answer [TERMINATE]

[TERMINATE IF AGE DOES NOT MATCH THE VALUE ON FILE]

S3. Please indicate your sex: (*Select only one option*) [RANDOMIZE “Female” AND “Male”; KEEP “Prefer not to answer” LAST]

- Male
- Female
- Prefer not to answer [TERMINATE]

[TERMINATE IF SEX DOES NOT MATCH THE VALUE ON FILE]

S4. In which state do you currently reside? (*Select only one option*)

[INSERT DROP DOWN MENU FOR STATE]

- None of the above [EXCLUSIVE; TERMINATE]

S5. Are you employed by...? (*Select all that apply*) [RANDOMIZE ORDER; KEEP “None of the above” LAST]

- A hospital, medical facility, or doctor’s office
- A home hardware or power tools manufacturer or retailer
- An online training or learning software company
- A K-12 school or school district
- An electronics retailer or manufacturer
- A law firm, legal services organization, or court
- A marketing, market research, or advertising agency
- None of the above [EXCLUSIVE]

[TERMINATE IF “A K-12 school or school district” IS NOT SELECTED]

S6. You indicated that you are currently employed by a K-12 school or school district. What is your role? (*Select all that apply*) [RANDOMIZE ORDER; KEEP “None of the above” LAST]

- Educator (e.g. Teacher, Teaching Assistant)
- Administrator (e.g. Principal, Superintendent, Director)

- Support staff (e.g. Counselor, Nurse, Librarian) [TERMINATE]
- Operation staff (e.g. Security Guard, Bus Driver) [TERMINATE]
- Maintenance staff (e.g. Groundskeeper, Custodian, Food service worker)
[TERMINATE]
- None of the above [EXCLUSIVE; TERMINATE]

S7. Are any of your family members employed by...? (*Select all that apply*) [SHOW EACH RESPONDENT THE SAME ORDER AS THEY SAW IN S5; KEEP “None of the above” LAST]

- A hospital, medical facility or doctor’s office
- A home hardware or power tools manufacturer or retailer
- An online training or learning software company [TERMINATE]
- A K-12 school or school district
- An electronics retailer or manufacturer
- A law firm, legal services organization, or court [TERMINATE]
- A marketing, market research, or advertising agency [TERMINATE]
- None of the above [EXCLUSIVE]

S8. Have you taken any surveys in the last 30 days on any of these topics? (*Select all that apply*) [RANDOMIZE ORDER; KEEP “None of the above” LAST]

- Sporting goods or outdoor gear
- Home hardware or power tools
- Professional development software [TERMINATE]
- Clothing
- Video games
- Cosmetics
- Home sound systems
- None of the above [EXCLUSIVE]

S9. People vary in the amount of attention they pay to these kinds of surveys. Some take them seriously and read each question, whereas others go very quickly and barely read the questions at all. If you have read this question carefully, please select “5” below. (*Select only one option*)

[RANDOMIZE BETWEEN THIS ORDER AND REVERSE; KEEP “Other (*Please specify*)” LAST]

- 0 – Not at all
- 1
- 2
- 3
- 4
- 5
- 6 – Very
- Other (*Please specify*) [EXCLUSIVE]

[TERMINATE IF “5” IS NOT SELECTED.]

[RECORD IF THE RESPONDENT QUALIFIES OR NOT. FOR NON-QUALIFYING RESPONDENTS, DISPLAY PANEL'S TERMINATION PAGE.]

Main Survey

Q0. You indicated that you are currently employed as an educator or administrator in a K-12 school or school district.

Please think about the materials and resources you have encountered that can help set, track, and achieve your skill and professional development goals.

On the following screens, you will be asked to answer a few questions about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district. These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes. Specifically, the questions will be about online learning platforms or software that provide a catalog of such courses for educators.

Please do not use your browser's "Back" button.

If you don't know an answer to a question or if you don't have an opinion, please don't guess. Simply indicate this in your response by selecting the "Don't know / Unsure" option. There are no right or wrong answers.

[NEXT PAGE]

Q1. Please think about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.

These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (Please be as specific as possible.)

[OPEN-ENDED TEXT BOX, LIMITING TO 1,000 CHARACTERS]

[REQUIRE AT LEAST 3 CHARACTERS; SHOW ERROR "Please be thorough in your response." IF ENTRY IS FEWER THAN 3 CHARACTERS]

- Don't know / Unsure [EXCLUSIVE; ANCHOR]

[NEXT PAGE]

Q2. Please think about how educators can meet *their own* skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.

These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which of the following brands, if any, do you recognize? (*Select all that apply*)

[RANDOMIZE ORDER; KEEP “Don’t know / Unsure” SECOND TO LAST AND “None of the above” LAST]

- Alludo
- Frontline Professional Growth
- PowerSchool
- BetterLesson
- ASCD Professional Development Tools
- SimpleK12
- edWeb
- Teaching Channel
- BirchPD **[RED HERRING; TERMINATE]**
- Dolphyn Learning **[RED HERRING; TERMINATE]**
- Don’t know / Unsure **[EXCLUSIVE]**
- None of the above **[EXCLUSIVE]**

[NEXT PAGE]

Follow-up Questions

F1. Are you or are you not aware of any lawsuits involving online professional development platforms or software? (*Select only one option*) **[RANDOMIZE ORDER; KEEP “Don’t know / Unsure” LAST.]**

- I am aware of at least one lawsuit
- I am not aware of any lawsuits
- Don’t know / Unsure **[ANCHOR]**

[GO TO PANEL ‘THANK YOU’ PAGE]

APPENDIX D.3

Brand Awareness Study: Pretest Moderator Instructions

Pretest Moderator Instructions

The pretest sample will include respondents who meet the study screening criteria. A minimum of ten pretest interviews will be conducted over the phone by a trained, blind-to-the-purpose interviewer with blind-to-the-purpose respondents.

Notes to moderator are in brackets, bolded, and all capital letters.

[Section I: Introduction and Questionnaire]

[MODERATOR TO READ]

Hello, [FIRST NAME]? My name is _____. Thank you so much for agreeing to help us out today. I am going to be on Zoom while you take an online survey and will be here the entire time you are taking the survey, so feel free to “think out loud” or bring up anything you would like while you are taking the survey. Please be thorough in your responses and take as much time as you need. After you are done taking the survey, I will ask you a few follow-up questions. Does that all sound okay?

[WAIT FOR RESPONSE AND CONTINUE]

Great, thank you. The link to the survey is in the calendar invitation you received. If you are comfortable doing so, could you share your screen as you are taking the survey?

[ALLOW THE RESPONDENT TO TAKE THE SURVEY AND FINISH]

[Section II: Follow-up Questions]

[QUESTIONS TO ASK AFTER THE RESPONDENT FINISHED RESPONDING TO ALL SURVEY QUESTIONS AND INDICATES SO. ADD PROBES SUCH AS “ANYTHING ELSE” TO CONFIRM THAT RESPONDENTS HAVE GIVEN A COMPLETE ANSWER.]

Q1. Did you have any problems or difficulties while taking the survey?

Q2. Did you think any questions were unclear? If so, which ones and why?

Q3. Did you think any answer options were unclear? If so, which ones and why?

Q4. Did any questions in the survey make you feel that you should provide a particular response, or did they not? If so, which ones and why?

Q5. Did you or did you not have any difficulty viewing any parts of the survey?

Q6. What do you think might be the purpose for conducting this survey?

Q7. What makes you think so?

Q8. Is there anything else you would like to say about the survey?

Thank you so much for your time. Your participation is appreciated, and we will make sure you get credit for completing this survey.

APPENDIX D.4

Brand Awareness Study: Blind Coding Instructions

Blind Coding Instructions

Thank you for agreeing to participate in the independent coding of survey responses. This document will provide an overview of this task and instructions on how to code the responses.

Survey Overview

1. You are being asked to be one of two coders who will categorize open-ended responses to a question in an online survey.
2. Specifically, you are being asked to code open-ended responses to one survey question below:

Q1. Please think about how educators can meet their own skill and professional development goals, particularly by taking online courses using a dedicated platform or software selected by their school district.

These online professional development courses for educators may include materials such as videos, interactive exercises, and quizzes.

Thinking about online learning platforms or software that provide a catalog of such courses for educators, which brands come to mind, if any? (*Please be as specific as possible.*)

Instructions

- 1) You will be responsible for categorizing the open-ended answers that respondents provided to the survey question above.
- 2) You will be given a spreadsheet which includes the open-ended response to the question above and space for you to code the responses.
- 3) Please use your best judgment when coding.
- 4) Your job is to fill in the “Brand Code” field with either a “0” or a “1” in each row. Assign the Brand Code to “1” if the answer clearly points to Alludo. Assign the Brand Code to “0” if the answer does not clearly point to Alludo.
- 5) Do not rush – take your time. Please read the question and response twice before making each coding decision.
- 6) Responses may include words that are misspelled. For example, a respondent might type “Bostin” when they meant “Boston.” Coders are to use their best judgment of

what the respondent intended to write when typing their response.

- 7) Coders are to use their own judgment – do NOT consult with anyone else. This is very important.
- 8) After both coders have categorized all the responses independently, you will meet to resolve any differences in coding. In the case of disagreement, please jointly recode the response and agree on a final coding.

Example

Q1. What brand was shown in this advertisement?

Assign the Brand Code to “1” if the answer clearly points to Volkswagen. Assign the Brand Code to “0” if the answer does not clearly point to Volkswagen.

Your spreadsheet would start out look something like this:

Respondent	Q1	Brand Code
0000000101	Volkswagen	
0000000102	Volksvagan four-door sedan	
0000000103	Airplane	
0000000104	VW?	
0000000105	No idea	
0000000106	Auto	

When you’re done, your spreadsheet should look like this:

Respondent	Q1	Brand Code
0000000101	Volkswagen	1
0000000102	Volksvagan four-door sedan	1
0000000103	Airplane	0
0000000104	VW?	1
0000000105	No idea	0
0000000106	Auto	0

EXHIBIT 6



Planet Depos®
We Make It Happen™

Transcript of Joel H. Steckel, Ph.D.

Date: November 13, 2024

Case: Alpenspruce Education Solutions, Inc -v- Cascade Parent Limited, et al.

Planet Depos

Phone: 888.433.3767 | **Email:** transcripts@planetdepos.com

www.planetdepos.com

Michigan #8598 | Nevada #089F | New Mexico #566

1 UNITED STATES DISTRICT COURT FOR THE WESTERN
2 DISTRICT OF WASHINGTON AT SEATTLE

3 - - - - - x

4 ALPENSPRUCE EDUCATION :
5 SOLUTIONS INC., a :
6 Washington Corporation, :
7 Plaintiff, :
8 v. : Case No.
9 CASCADE PARENT LIMITED, a : 2:23-CV-00692-MJP
10 Jersey limited company; :
11 and PARALLELS INC., a :
12 Delaware Corporation, :
13 Defendants. :

14 - - - - - x

15
16 Videotaped Deposition of
17 JOEL H. STECKEL, Ph.D.
18 Conducted virtually via Zoom
19 Wednesday, November 13, 2024

20 9:48 a.m. CST

21
22 Job No.: 560856

23 Pages: 1 - 183

24 Reported by: THERESA A. VORKAPIC,
25 CSR, RMR, CRR, RPR

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

2

1 Videotaped deposition of Joel H. Steckel,
2 Ph.D., conducted virtually via zoom, pursuant to
3 notice before Theresa A. Vorkapic, a Certified
4 Shorthand Reporter, Registered Merit Reporter,
5 Certified Realtime Reporter, Registered
6 Professional Reporter and a Notary Public in and
7 for the State of Illinois.

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Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

3

1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFF:

3 KYLE M. KANTAREK, ESQUIRE

4 K&L GATES LLP

5 70 West Madison Street

6 Suite 3300

7 Chicago, Illinois 60602

8 312-807-4206

9 kyle.kantarek@klgates.com

10
11 ON BEHALF OF THE DEFENDANTS:

12 VALERIE G. MATTHEWS, ESQUIRE

13 BARNES & THORNBURG LLP

14 One North Wacker Drive

15 Suite 4400

16 Chicago, IL 60606-2833

17 312-214-2109

18 valerie.matthews@btlaw.com

19
20 ALSO PRESENT:

21 John Gugarty, Videographer, Planet Depos

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

4

1 C O N T E N T S

2 EXAMINATION OF JOEL H. STECKEL, Ph.D. PAGE

3 Examination By Mr. Kantarek 6

5 E X H I B I T S

6 (Attached to transcript.)

8 STECKEL DEPOSITION EXHIBITS PAGE

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Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

5

1	P R O C E E D I N G S	09:26:31
2	THE VIDEOGRAPHER: Here begins Media No. 1	09:48:05
3	in the videotaped deposition of Joel H. Steckel,	09:48:31
4	Ph.D., in the matter of Alpenspruce Education	09:48:36
5	Solutions, Inc. v. Cascade Parent, Limited and	09:48:42
6	Parallels, Inc., in the United States District	09:48:45
7	Court for the District of Washington at Seattle,	09:48:49
8	Case No. 2:23-CV-00692-MJP.	09:48:52
9	Today's date is November 13, 2024. The	09:49:05
10	time on the video monitor is 9:49 Central. The	09:49:12
11	remote videographer today is John Gugarty	09:49:15
12	representing Planet Depos. All parties of this	09:49:19
13	video deposition are attending remotely.	09:49:22
14	Would counsel please voice-identify	09:49:25
15	themselves and state whom they represent?	09:49:29
16	MR. KANTAREK: Kyle Kantarek with K&L	09:49:29
17	Gates representing the plaintiff.	09:49:33
18	MS. MATTHEWS: Valerie Matthews of Barnes	09:49:37
19	& Thornburg on behalf of defendant and	09:49:40
20	Mr. Steckel.	09:49:41
21	THE VIDEOGRAPHER: The court reporter	09:49:43
22	today is Theresa Vorkapic also representing Planet	09:49:44
23	Depos. The witness will now be sworn.	09:49:45
24	THE REPORTER: Would you raise your right	
25	hand, please.	

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

6

1 (The witness was duly sworn.) 09:49:56

2 JOEL H. STECKEL, Ph.D.,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION 09:49:59

6 BY MR. KANTAREK: 09:49:59

7 Q Good morning, Dr. Steckel. Just to begin, 09:50:03
8 can you state your name for the record and spell 09:50:05
9 your last name. 09:50:06

10 A My name is Joel Howard Steckel. My last 09:50:07
11 name is spelled S-t-e-c-k-e-l. 09:50:17

12 Q What's your home address? 09:50:18

13 [REDACTED] 09:50:20

14 [REDACTED] 09:50:23

15 Q What's your business address? 09:50:31

16 [REDACTED] 09:50:32

17 [REDACTED] 09:50:36

18 Q And how old are you? 09:50:42

19 A You know how to get me upset to start. 09:50:43

20 I'm 68 years old and I know I don't look it. 09:50:45

21 Q I was about to say that. 09:50:50

22 I'm going to go over some -- I know you've 09:50:52
23 been deposed a lot before, Dr. Steckel, but I'm 09:50:55
24 going to go over some basic ground rules. Is that 09:50:58
25 all right with you? 09:51:00

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

51

1	BY THE WITNESS:	10:55:46
2	A I think that's logical. I think that	10:55:47
3	that's logical that that group, the group that's	10:55:49
4	between jobs would not be as aware as the group	10:55:51
5	that's in the job. They'd be more focused on	10:55:55
6	getting a job.	10:56:02
7	BY MR. KANTAREK:	10:56:03
8	Q Is it your understanding that educators	10:56:03
9	and administrators that are between jobs have no	10:56:06
10	need for professional development?	10:56:09
11	A No. That is not my understanding at all.	10:56:12
12	I think they may have need for professional	10:56:15
13	development.	10:56:19
14	Q And you would agree that an educator and	10:56:20
15	administrator between jobs would have more time	10:56:28
16	for professional development if they are not	10:56:29
17	currently working, right?	10:56:35
18	A If their focus is on professional	10:56:35
19	development, yes. But as you tried to point out	10:56:38
20	earlier, if you go by your -- you can't have your	10:56:44
21	cake and eat it, too, Mr. Kantarek. You tried to	10:56:47
22	get me to testify earlier that the assistant	10:56:52
23	superintendent or principals are the ones that	10:56:54
24	make the decision. Well, if they are the ones	10:56:57
25	that make the decision, people between jobs don't	10:56:59

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1	have access to it.	10:57:01
2	So, you know, pick a lane. Which view do	10:57:04
3	you want to take? You can't have them both.	10:57:07
4	Q Well, my issue is with the saying have	10:57:14
5	your cake and eat it too aside, I'm trying to	10:57:16
6	understand your position. My position is not at	10:57:19
7	issue here. So I'm glad you raised that.	10:57:24
8	If -- so your position is that -- is your	10:57:45
9	position that only decision-makers should be	10:57:46
10	studied for their awareness of the Alludo brand?	10:57:47
11	A People who are likely to be customers or	10:57:50
12	influencers in the purchase of the Alludo product	10:57:52
13	or the contraction of a license for the Alludo	10:57:58
14	platform or however the product is distributed,	10:58:02
15	that they are the ones who should be included in	10:58:04
16	this awareness study.	10:58:06
17	Q And earlier you talked -- earlier you made	10:58:14
18	an analogy between parents of children who consume	10:58:24
19	products and the children themselves as compared	10:58:31
20	to the folks who consume plaintiff's Alludo	10:58:33
21	product versus the folks who make the purchasing	10:58:39
22	decisions.	10:58:41
23	Do you remember that?	10:58:42
24	A I do remember that.	10:58:43
25	Q So you just testified that the folks that	10:58:49

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1	should be studied for the awareness of the Alludo	10:59:00
2	brand are people who are likely to be customers or	10:59:04
3	influencers in the purchase of the Alludo product,	10:59:06
4	right?	10:59:10
5	A People who are somehow involved in the	10:59:13
6	purchase of the Alludo product, and somehow	10:59:16
7	involved could be very broad. The users, the	10:59:19
8	influencers, software engineers --	10:59:27
9	Q Right. Would you say --	
10	A -- purchasing agents.	10:59:32
11	Q Sure. Would you say -- sorry, strike that	10:59:35
12	beginning.	10:59:57
13	Let's take a counselor at a K through 12	11:00:01
14	school or school district. Would a counselor	11:00:06
15	somehow be involved in the purchase of the Alludo	11:00:10
16	product by that school district?	11:00:13
17	A Maybe.	11:00:16
18	Q But you excluded them from your study,	11:00:17
19	right?	11:00:20
20	A No.	11:00:20
21	Q If you look at Exhibit 2, Appendix D, Page	11:00:38
22	D.2-2 -- and let me know when you're there.	11:00:53
23	A I am.	11:01:08
24	Q So in S6, this question is a question from	11:01:08
25	your survey, right?	11:01:15

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1 A Oh, yes. 11:01:19

2 Q Yeah. So this is the question in your 11:01:22

3 survey, right? 11:01:24

4 A Yes. 11:01:25

5 Q It says: "You indicated that you are 11:01:27

6 currently employed by a K through 12 school or 11:01:28

7 school district. What is your role?" 11:01:31

8 Do you see that? 11:01:33

9 A Yes, I do see that. 11:01:34

10 Q At the top of the next page, Page D.2-3, 11:01:37

11 it says: "Support staff, e.g., counselor, nurse, 11:01:42

12 librarian," and then after that -- 11:01:45

13 A Yes. 11:01:47

14 Q -- it says "terminate." 11:01:48

15 Right? 11:01:50

16 A Yes. 11:01:50

17 Q So you did exclude counselors from K 11:01:52

18 through 12 schools from your study, right? 11:01:54

19 A Well, I -- I included counselors that were 11:01:58

20 support staff -- see, this group here, they're 11:02:00

21 support staff for students. Now, support staff 11:02:04

22 for administrators -- for faculty, for 11:02:11

23 professional development don't necessarily fall 11:02:15

24 into this category. 11:02:21

25 Q And that explanation you just provided, 11:02:23

Transcript of Joel H. Steckel, Ph.D.

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1	that's not included in Question S6, right?	11:02:25
2	A That's right. It's not.	11:02:29
3	Q Question S6 just asks what is your role,	11:02:31
4	right?	11:02:35
5	A Right.	11:02:36
6	Q And as we discussed, this study terminates	11:02:37
7	if someone selects the role as support staff which	11:02:40
8	includes counselor, nurse, librarian, right?	11:02:43
9	A That's what it says.	11:02:47
10	Q Now, if you --	11:02:56
11	A One of the questions --	
12	Q Hold on, Dr. Steckel, there is no question	11:02:59
13	pending.	11:03:01
14	If you -- we talked about educators that	11:03:02
15	were -- or administrators that were between jobs.	11:03:07
16	What about -- what about educators and	11:03:11
17	administrators at universities, why didn't you	11:03:13
18	consider those in your -- in your study?	11:03:15
19	A Because your complaint discusses K through	11:03:19
20	12.	11:03:22
21	Q Exclusively?	11:03:24
22	A Well, let's go look at the complaint. I	11:03:26
23	don't recall.	11:03:31
24	Q Well, I guess in any event, you did not --	11:03:31
25	you did not consider educators and administrators	11:03:35

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1 at universities because your reading of the 11:03:38
2 complaint is that plaintiff's consumer base is 11:03:42
3 only K through 12 administrators and educators, 11:03:47
4 right? 11:03:52

5 A Or primarily K through 12. 11:03:52

6 Q But that's all your study -- 11:03:57

7 A I mean certainly -- wait. Certainly, you 11:03:59
8 know, it's what the complaint says and it's what 11:04:02
9 the website really says, too. 11:04:05

10 If you go to Alludolearning.com I think 11:04:07
11 it's pretty obvious that their focus is on K 11:04:12
12 through 12. 11:04:15

13 Q So I guess --

14 A And certainly -- certainly if K through 12 11:04:19
15 aren't aware, it's hard to imagine that university 11:04:21
16 administrators would be aware. 11:04:25

17 Q Well, so you testified that the -- that 11:04:31
18 plaintiff's focus is on K through 12. 11:04:39

19 Is your brand awareness -- is brand 11:04:42
20 awareness only relevant if it's from a population 11:04:44
21 that plaintiff is specifically focused on? 11:04:50

22 A Well, I'll answer your question this way. 11:04:57
23 If you're focusing on brand awareness, if you're 11:05:02
24 building brand awareness, the first place you got 11:05:05
25 to do it is in your target market. 11:05:07

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1 Q And there are -- but first place aside, 11:05:11
2 right, there are other places where you're 11:05:12
3 trying -- sorry, strike that. 11:05:15
4 You may be trying to build your brand in 11:05:15
5 places besides what you have described as a focus 11:05:22
6 of a target market, right? 11:05:26
7 A Well, theoretically that's possible, but 11:05:28
8 if you do that and you have no brand awareness in 11:05:31
9 your target market, you're going to go out of 11:05:35
10 business real quick. And furthermore, there is no 11:05:37
11 evidence that I've seen that plaintiff was trying 11:05:40
12 to do that. 11:05:44
13 Q So we talked a little bit about 11:05:48
14 decision-makers for purchasing decisions for K 11:05:54
15 through 12 schools and school districts. Do you 11:05:57
16 remember that? 11:06:01
17 A I do, but I also remember testifying to 11:06:02
18 the effect that the term decision-makers is 11:06:08
19 ambiguous. 11:06:13
20 Q I understand. Yeah, I'm going to get into 11:06:14
21 that. I was just trying to transition us over to 11:06:16
22 another topic. If you could just focus on the 11:06:20
23 question. 11:06:22
24 If -- so who makes purchasing decisions 11:06:23
25 for K through 12 schools or school districts? 11:06:29

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1	A I don't know. What do you mean by "makes	11:06:34
2	decisions"?	11:06:36
3	Q Who decides what learning platform to	11:06:40
4	purchase -- sorry, strike that.	11:06:45
5	Who decides which purchases to make	11:06:49
6	ultimately?	11:06:55
7	A Maybe the purchasing agent. I don't know.	11:06:58
8	I really don't know. And to say -- to say that	11:07:01
9	there is one individual or one role that does that	11:07:05
10	is a gross mischaracterization of any B2B or B2G	11:07:09
11	process.	11:07:14
12	Q So it's a gross mischaracterization	11:07:23
13	because there are a lot of people who contribute	11:07:26
14	to a purchasing decision for learning platforms	11:07:29
15	for K through 12 schools or school districts?	11:07:33
16	MS. MATTHEWS: Objection.	11:07:37
17	BY THE WITNESS:	11:07:38
18	A That's my understanding.	11:07:39
19	BY MR. KANTAREK:	11:07:40
20	Q Those people would include the students	11:07:40
21	themselves, perhaps?	11:07:42
22	A Well, I don't know. I mean, doubtful.	11:07:46
23	Doubtful. I mean, I've had a fair -- although	11:07:52
24	I've never taught in a K through 12 institution, I	11:07:56
25	have a lot of experience with teaching and with	11:08:00

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1 introduction to learning platforms, and my 11:08:03
2 understanding is that the students that I teach 11:08:07
3 have no idea of what learning platforms are 11:08:10
4 available to us. 11:08:13

5 Q Focusing on administrators, is it your 11:08:21
6 understanding -- you mentioned that you have 11:08:25
7 experience with teaching and introduction to 11:08:28
8 learning platforms. 11:08:30

9 Is it your experience that principals make 11:08:31
10 purchasing decisions for learning platforms for 11:08:42
11 schools and school districts? 11:08:45

12 A I can only -- I haven't studied that 11:08:46
13 deeply, but I can tell you that at least in my 11:08:51
14 institution, the dean or the principal essentially 11:08:54
15 signs off on a recommendation, but in some sense 11:09:02
16 does participate. 11:09:06

17 Q So you said they sign off on a 11:09:09
18 recommendation. Who makes the recommendation in 11:09:12
19 your experience? 11:09:13

20 A Well, a committee, an interdisciplinary 11:09:14
21 committee that is formed by faculty, IT 11:09:18
22 specialists, learning specialists, et cetera. In 11:09:24
23 other words, education instructors and 11:09:28
24 administrators. 11:09:31

25 Q Sorry. So an IT specialist you would 11:09:34

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1	consider an education instructor or administrator?	11:09:37
2	A Well, at least in my case because there	11:09:42
3	has to be feasibility or compatibility with the	11:09:45
4	school's information system, and the IT specialist	11:09:50
5	would be able to assess that and assess the risk	11:09:55
6	of the system going down.	11:10:03
7	Q So if you go back to Page D.2-2 of	11:10:08
8	Exhibit 2 --	11:10:13
9	A Yeah.	11:10:15
10	Q -- we were talking about Question S6,	11:10:15
11	where would you place IT staff -- sorry, strike	11:10:20
12	that. An IT specialist --	11:10:24
13	A Administrator, an administrator.	11:10:28
14	Q And you think someone reading this	11:10:34
15	question would understand that administrator,	11:10:36
16	e.g., principal, superintendent, director, covers	11:10:41
17	an IT specialist?	11:10:44
18	A Yes, many of them actually have the title	11:10:47
19	director.	11:10:50
20	(Reporter clarification.)	
21	BY MR. KANTAREK:	11:11:18
22	Q Does an IT specialist support educators at	11:11:18
23	a K through 12 school or school district?	11:11:24
24	A Sure, I would presume so.	11:11:30
25	Q Your Question S6 includes an answer that's	11:11:36

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1	labeled support staff, right?	11:11:42
2	A Yeah, but the support staff -- the target	11:11:43
3	of support is different than the support for	11:11:45
4	administrator.	11:11:47
5	Q If somebody -- strike that.	11:11:58
6	It doesn't say in Question S6 support	11:11:58
7	staff (different than support for administrators),	11:12:01
8	right?	11:12:08
9	A No, but the examples are -- are student	11:12:09
10	support.	11:12:12
11	Q So by that logic are -- strike that.	11:12:24
12	So by that logic, are groundskeepers,	11:12:29
13	custodians and food service workers maintenance --	11:12:37
14	student maintenance?	11:12:42
15	A I don't understand the question.	11:12:46
16	Q Well, you said that the examples in	11:12:49
17	support staff are student support, right?	11:12:52
18	A Right.	11:12:55
19	Q So are the examples in maintenance staff	11:12:57
20	student maintenance?	11:13:00
21	A No. I mean, that's ridiculous.	11:13:02
22	Q Right because in maintenance	11:13:05
23	groundskeeper, custodian, food service worker,	11:13:08
24	they maintain the school; is that right?	11:13:10
25	A Yeah, well, that could be one way to look	11:13:13

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1 it? 14:20:57

2 A Yeah. I can't get off of Page 1. 14:21:04

3 Q Maybe you can -- 14:21:08

4 MS. MATTHEWS: I think if you just click, 14:21:08

5 if you have the toggle panel open and you click. 14:21:10

6 THE WITNESS: Nice try but nope. 14:21:13

7 BY MR. KANTAREK: 14:21:15

8 Q Do you see at the bottom where it says 1 14:21:16

9 out of 4 and it has an arrow up and an arrow down 14:21:18

10 or number out of four, perhaps you could use 14:21:22

11 those -- 14:21:26

12 A No. I got somehow to print. I may have 14:21:26

13 to close and open. 14:21:51

14 Q I think I can show it to you maybe. Let's 14:21:59

15 see. Did that work? Are you looking at mine now? 14:22:01

16 On your screen, sorry, do you see me moving it or 14:22:04

17 not? 14:22:08

18 MS. MATTHEWS: No, we can't see your 14:22:08

19 screen. 14:22:10

20 BY MR. KANTAREK: 14:22:35

21 Q Here so -- yeah, can you escape out of it? 14:22:36

22 Sorry, what are you looking at, Dr. Steckel? 14:22:37

23 A I have no idea. I tried to -- I think I 14:22:39

24 just got -- I have to get back into AgileLaw. 14:22:42

25 Q Sure, sure, sure. 14:22:47

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1	A Okay, join. Do I log in or join?	14:22:52
2	Q Join.	14:22:56
3	MS. MATTHEWS: Join.	14:22:57
4	MR. KANTAREK: You go ahead.	14:22:58
5	THE WITNESS: Okay. So I'm right there.	14:23:00
6	And we're on Exhibit 8?	14:23:04
7	BY MR. KANTAREK:	
8	Q Yeah, it's Tab G is the naming convention	14:23:06
9	I had for the deck if that helps.	14:23:10
10	A What page do you want me to go to, 2?	14:23:12
11	Q Page 2, please, yes.	14:23:15
12	A Okay.	14:23:16
13	Q We did it.	14:23:19
14	On Page 2 and No. 2, it says: "Set up	14:23:20
15	traps."	14:23:23
16	Do you see that?	14:23:24
17	A Yes.	14:23:26
18	Q And under that it says in the second	14:23:28
19	bullet: "Add red herring answer choices.	14:23:31
20	Including answer choices that are not legitimate	14:23:34
21	options, i.e., nonexistent products, retailers,	14:23:37
22	medical conditions is very effective in	14:23:43
23	identifying bad survey takers."	14:23:45
24	Do you see that?	14:23:46
25	A Fortunately I do.	14:23:48

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1	Q And you agree that red herring choices are	14:23:50
2	illegitimate options, right?	14:23:53
3	A Yes.	14:23:55
4	Q And I think this uses examples of	14:23:56
5	nonexistent products or retailers, right?	14:24:00
6	A Correct.	14:24:10
7	Q And it actually has an example of: "Which	14:24:10
8	of the following IT vendors provides your company	14:24:13
9	with Intel-based servers?"	14:24:16
10	And the answers are "HP, Technology	14:24:18
11	Frontier, IBM and Dell?"	14:24:22
12	And then it says: "In this example	14:24:23
13	Technology Frontier does not exist."	14:24:25
14	Do you see that?	14:24:27
15	A Yes.	14:24:33
16	Q So in this example the red herring is	14:24:33
17	Technology Frontier, right?	14:24:35
18	A Yes.	14:24:37
19	Q And IBM stands for International Business	14:24:38
20	Machines, right?	14:24:40
21	A Yes.	14:24:41
22	Q So what if -- what if we remove Technology	14:24:45
23	Frontier and it had HP, Dell, and then IBM but it	14:24:47
24	said Intranational Business Machines, would	14:24:53
25	Intranational Business Machines be a red herring?	14:24:58

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1 A Oh, gosh. I don't know. Fortunately, I 14:25:08
2 didn't do something like that. No, I don't think 14:25:11
3 anybody would set up a red herring like that. Not 14:25:14
4 anybody who wanted to retain credibility in 14:25:17
5 presenting the results of a survey. 14:25:20

6 Q When you say -- 14:25:22

7 A You know, I don't know.

8 Q When you say "set up a red herring like 14:25:24
9 that," what do you mean? 14:25:26

10 A I mean setting it up so like it's 14:25:27
11 confusingly similar to something that is real. 14:25:29

12 Q So how far away from legitimate options 14:25:40
13 should red herrings about? 14:25:44

14 A I don't know. I haven't studied that. 14:25:45
15 But it's very different than setting up a control. 14:25:48
16 Like what you're suggesting might be how you'd set 14:25:50
17 up a control in certain studies, but, you know -- 14:25:52

18 Q What if -- sorry. 14:26:05

19 A But, you know, I haven't studied that and, 14:25:59
20 you know, it's always safe to make it very 14:26:02
21 different. 14:26:05

22 Q So let's look back at Exhibit 5, which is 14:26:15
23 at Tab H, this is that Kantar Group exhibit. 14:26:19

24 A Okay. 14:26:23

25 Q If you go to Page 4 of 8, which is 307 on 14:26:23

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1 the bottom right corner of Exhibit 5, and you let
2 me know when you're there.

14:26:28

14:26:30

3 A Yes.

14:26:31

4 Q And there's a red herring section here,
5 right?

14:26:32

14:26:34

6 A Yeah.

14:26:35

7 Q And this says: "A red herring is a type
8 of survey question that incorporates a fake option
9 among a set of valid ones." And then it has an
10 example similar to what we discussed.

14:26:37

14:26:46

14:26:48

14:26:54

11 It says: "Though red herrings may seem
12 silly, they can be helpful. Just make sure the
13 fake answer choice is actually fake or doesn't
14 sound too similar to an actual product, company or
15 service."

14:26:56

14:27:00

14:27:02

14:27:05

14:27:08

16 Do you see that?

14:27:08

17 A Yes.

14:27:09

18 Q And that's what you were talking about
19 when you said "it's always safe to make it very
20 different," right?

14:27:09

14:27:10

14:27:14

21 A Yes.

14:27:16

22 Q So you chose red herrings here and we
23 talked about these are Birch PD and Dolphin
24 Learning, right?

14:27:19

14:27:22

14:27:27

25 A Yes.

14:27:27

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1 Q How did you come up with these red 14:27:28
2 herrings? 14:27:30

3 A The team did, I didn't. 14:27:30

4 Q And to be clear, the people who chose the 14:27:37
5 red herrings were screened out of the study, 14:27:38
6 right? 14:27:40

7 A Yes. 14:27:41

8 Q Let's go to Tab J, I'll introduce an 14:27:41
9 exhibit. This is Exhibit 9 I think. Yeah. 14:27:45

10 (A certain document was marked Steckel 14:27:51
11 Deposition Exhibit 9 for identification,
12 as of 11/13/2024.) 14:28:05

13 BY MR. KANTAREK: 14:28:05

14 Q I'm going to reveal it. You can let me 14:28:05
15 know when you have Exhibit 9 open. 14:28:07

16 A I do. 14:28:38

17 Q If you go to Page 2 -- or sorry -- Page 1 14:28:39
18 of 3 which is 204 of the PDF of Exhibit 9, you see 14:28:40
19 this says: "Welcome to Dolphin Learning Zone for 14:28:45
20 professionals." 14:28:48

21 Right? 14:28:49

22 A Yes. 14:28:49

23 Q And under that it says: "Dolphin offers 14:28:51
24 accredited courses for assessors, educators and 14:28:54
25 trainers. Each course is free and offers an 14:28:58

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1	assessment certificate and digital badge to	14:29:00
2	recognize successful completion of the course."	14:29:03
3	Do you see that?	14:29:06
4	A I do.	14:29:07
5	Q Dolphin Learning Zone is similar to	14:29:14
6	Dolphin Learning, right?	14:29:17
7	A Seems to be.	14:29:18
8	Q And someone who misidentified the red	14:29:28
9	herring as Dolphin Learning Zone after typing in	14:29:32
10	Alludo in Question 1 would have been excluded from	
11	your survey, right?	14:29:37
12	A After typing in Alludo in Question 1?	14:29:37
13	Q Yes.	14:29:39
14	A Or clicking on Alludo in Question 1?	14:29:39
15	Q Question 1 is an unaided survey answer,	14:29:42
16	right?	14:29:49
17	A Correct. Nobody typed in -- oh -- oh, I	14:29:50
18	see what you're saying. Okay. All right. So --	14:29:52
19	Q So let me just ask it -- let me just ask	14:29:56
20	it again.	14:29:57
21	Someone who typed in Alludo in Question 1	14:29:57
22	and then clicked on Dolphin Learning in Question 2	14:30:01
23	would have been excluded from your study, right?	14:30:04
24	A Yes.	14:30:07
25	Q And then let's go to Tab I, and we'll mark	14:30:14

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1	this. It will be Exhibit 10.	14:30:19
2	(A certain document was marked Steckel	14:30:26
3	Deposition Exhibit 10 for identification,	
4	as of 11/13/2024.)	14:30:31
5	BY MR. KANTAREK:	14:30:31
6	Q Please let me know when you have	14:30:31
7	Exhibit 10 open.	14:30:33
8	A I'm there.	14:30:50
9	Q Exhibit 10 is a web capture from	14:30:51
10	BirchTrainingInstitute.org.	14:30:56
11	Do you see that?	14:30:58
12	A Yes.	14:30:59
13	Q And if you look at Page 1 of 2, it says:	14:31:00
14	Birch Training Institute, the Birch Training	14:31:06
15	Institute has been offering since 1972	14:31:09
16	professional staff development program,	14:31:11
17	consultation and training and general education to	14:31:14
18	groups or individuals seeking to expand their	14:31:17
19	expertise and capacity to provide services to	14:31:20
20	children with autism spectrum disorder and related	14:31:23
21	development disabilities.	14:31:26
22	Do you see that?	14:31:27
23	A I do.	14:31:28
24	Q And Birch Training Institute is similar to	14:31:30
25	Birch PD, right?	14:31:40

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

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1	A To a degree, yes.	14:31:41
2	Q Well, Birch is found at the beginning of	14:31:48
3	both phrases, right?	14:31:50
4	A I agree.	14:31:56
5	Q And Birch PD is presumably short for Birch	14:31:56
6	Professional Development to the extent you can	14:32:02
7	understand the red herring?	14:32:04
8	A Well, I think that's -- that's likely.	14:32:05
9	Q And someone who typed in Alludo in	14:32:08
10	Question 1 but clicked on Birch PD in Question 2	14:32:12
11	would have been excluded from your study, right?	14:32:16
12	A They would have been excluded from our	14:32:19
13	count. I'm not sure they are excluded from the	14:32:22
14	dataset. It would be interesting to know because	14:32:25
15	it says terminate in Q2. It would be interesting	14:32:32
16	to see.	14:32:33
17	Q But in any event, they are terminated --	14:32:35
18	A I don't know offhand, but they would have	14:32:37
19	been excluded from the final tally.	14:32:39
20	Q So if you look at Exhibit 1 of Tab B --	14:32:45
21	sorry, Exhibit 1 of Exhibit 2 which is your	14:32:54
22	report, this is --	14:33:00
23	A Yes.	14:33:01
24	Q -- on Page 24, it's without a page number,	14:33:01
25	it looks like 14 were excluded for selecting a red	14:33:07

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

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1	herring, right?	14:33:12
2	A Yes.	14:33:12
3	Q And so that's 14 possible -- 14 people who	14:33:14
4	could have -- who could have identified Alludo in	14:33:21
5	Question 1 and then been excluded in Question 2,	14:33:25
6	right?	14:33:27
7	A Well, it could have, but still, if you add	14:33:29
8	those in, it doesn't change the qualitative	14:33:38
9	insight. Suppose, and it's unlikely given what	14:33:41
10	happened to the 250 that are in the -- in the	14:33:48
11	final dataset, it's unlikely that they all would	14:33:52
12	have said Alludo. But even if they did, you've	14:33:55
13	got 14 out of 264, that's still relatively low	14:34:00
14	number.	14:34:05
15	Q So sorry. So I think you answered my	14:34:06
16	question and my follow-up question is: People who	14:34:10
17	selected a red herring could have also -- in	14:34:13
18	Question 2 may have also selected Alludo in	14:34:17
19	Question 2, right, because Question 2 allows you	14:34:20
20	to select multiple options?	14:34:23
21	A It is possible although unlikely, but even	14:34:27
22	if every single one of them did, it wouldn't	14:34:31
23	really change the qualitative conclusion of low	14:34:35
24	awareness.	14:34:39
25	Q So in Question 2, your low awareness	14:34:41

Transcript of Joel H. Steckel, Ph.D.

Conducted on November 13, 2024

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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2
3 I, Theresa A. Vorkapic, Certified
4 Shorthand Reporter No. 084-2589, CSR, RMR, CRR,
5 RPR, and a Notary Public in and for the County of
6 Kane, State of Illinois, the officer before whom
7 the foregoing deposition was taken, do hereby
8 certify that the foregoing transcript is a true
9 and correct record of the testimony given; that
10 said testimony was taken by me and thereafter
11 reduced to typewriting under my direction; that
12 reading and signing was not requested; and that I
13 am neither counsel for, related to, nor employed
14 by any of the parties to this case and have no
15 interest, financial or otherwise, in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and affixed my notarial seal this 25th day of
18 November, 2024.

19 My commission expires November 6, 2027.

21 
22

23 THERESA A. VORKAPIC

24 NOTARY PUBLIC IN AND FOR ILLINOIS

EXHIBIT 7

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ALPENSPRUCE EDUCATION SOLUTIONS INC.

vs

CASCADE PARENT LIMITED, et al.

JASON ROYER

October 18, 2024



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ALPENSPRUCE EDUCATION SOLUTIONS INC. vs CASCADE PARENT LIMITED, et al. Attorneys Eyes Only
Jason Royer - October 18, 2024

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALPENSPRUCE EDUCATION)
SOLUTIONS INC., a)
Washington Corporation,)
Plaintiff,) NO. 2:23-CV-00692-MJP
vs.)
CASCADE PARENT LIMITED, a)
Jersey limited company;)
and PARALLELS INC., a)
Delaware Corporation,)
Defendant.)

CERTIFIED
TRANSCRIPT

VIDEO-RECORDED DEPOSITION UPON ORAL EXAMINATION OF
JASON ROYER
October 18, 2024
(Via Zoom)
PAGES 1 through 192

(FOR ATTORNEYS' EYES ONLY)

Taken Before:

Kristin D. Manley, RPR, CCR

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ALSO PRESENT:

MS. CONNIE CHEN
MR. MORGAN DIXON



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8 2	Amended Notice of Videotaped 30(b)(6) Deposition of Cascade Parent Limited	191	--
9 3	Defendant Cascade Parent Limited's Objections and Responses to Plaintiff's Notice of 30(b)(6) Deposition	191	--
10 4	Amended Notice of Videotaped 30(b)(6) Deposition of Parallels Inc.	191	--
11 5	Defendant Parallels Inc.'s Objections and Responses to Plaintiff's Notice of 30(b)(6) Deposition	191	--
12 6	Alludo Group Org Structure	191	--



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NO.	DESCRIPTION	MARKED	IDENTIFIED
7 - 1	Cover Sheet Labeled Document Produced in Native Format	191	--
7 - 2	Excel Spreadsheet	191	--
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1 BE IT REMEMBERED that on Friday, October 18,
2 2024, at 7:03 a.m. via Zoom, appeared the above-named
3 witness before Kristin D. Manley, Washington State
4 Certified Stenographic Court Reporter, residing at
5 Montesano, authorized to administer oaths and
6 affirmations pursuant to RCW 5.28.010.

7 WHEREUPON the following proceedings were had, to
8 wit:

9
10
11 THE VIDEOGRAPHER: This is a video-recorded
12 virtual deposition. Today's date is October 18th, 2024
13 and the time is 7:03 a.m. Pacific Time. My name is
14 T.J. Peitz. I own Sound Vision Video Production. My
15 phone number is 253-905-4941. The case is Alpenspruce
16 Education Solutions Inc. versus Cascade Parent Limited
17 et al. Would the attorneys please introduce themselves
18 starting with the noting attorney for the plaintiff?

19 MS. PETERSON: Good morning. Arissa Peterson of
20 K & L Gates on behalf of plaintiff Alpenspruce Education
21 Solutions Inc.

22 MR. DIXON: Morgan Dixon on behalf of the same.

23 MR. RATAIN: And this is Bruce Ratain from Barnes
24 and Thornburg on behalf of the defendants Cascade Parent
25 Limited and Parallels Inc. And with me is in-house



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1 A I'm in my home in Austin, Texas.

2 Q So today we are meeting for your personal deposition

3 on behalf of Cascade Parent Limited and Parallels Inc.

4 And you are also -- you have been designated as the

5 corporate representative for Cascade Parent Limited

6 and Parallels Inc.; is that your understanding?

7 A Yes.

8 Q And just as a preliminary issue, I represent

9 Alpenspruce Education Solutions Inc. If we can agree

10 I will probably use the shorthand Alpenspruce, if

11 that's okay with you?

12 A Yes.

13 Q Thank you. And for Cascade Parent Limited, how would

14 you like me to refer in shorthand? Do you prefer

15 Cascade Parent or Cascade or the full name?

16 A I think Cascade Parent would be important in this

17 matter.

18 Q Okay. So I will refer -- and please remind me or

19 clarify if it is not clear to you when I say

20 Cascade --

21 A Okay.

22 Q I mean Cascade Parent in most situations. And

23 similarly for Parallels Inc., is it okay if we refer

24 to the shorthand Parallels today?

25 A No. I would prefer that you say Parallels Inc.



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1 this, or at least my involvement in it.

2 Q And if we can start with this first tab, that's P&L
3 tab. What does P&L refer to?

4 A Profit and loss.

5 Q And then -- and feel free to look at your -- I know
6 you have a separate copy. I'm just going to scroll up
7 to the top. What does the header -- so I'm looking at
8 "Consolidated" and then "Parallels Inc." What does
9 "Consolidated" refer to?

10 A "Consolidated" refers to the consolidation of multiple
11 streams of financial information into Cascade Parent
12 entity. So it is at the Cascade Parent level.

13 Q And then next to consolidated it says "Parallels Inc."
14 Is -- is that data beneath in those columns just
15 for -- just for "Parallels Inc."?

16 A That's correct.

17 Q Okay. So going back to "Consolidated," does that also
18 include Parallels Inc.?

19 A Yes.

20 Q And then I see here there is "Global" underneath the
21 years.

22 A Yes.

23 Q Can you explain what the "Global" terminology means?

24 A It just means that there is no particular region or
25 country designated. It is worldwide -- a representation



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1 Q What does that abbreviation DATAEDUC stand for?

2 A Sure. This is the import from our financial database
3 related to anything related to education customers that
4 we have determined to be in our system -- education
5 customers or SKU types in our system.

6 Q How do you categorize a customer as an education
7 customer?

8 MR. RATAIN: Object to form.

9 THE WITNESS: Okay.

10 BY MS. PETERSON:

11 Q Do you -- I will rephrase.

12 Do you know how an education customer is determined
13 to be an education customer?

14 A We don't have a particular notation for education
15 customers or education entities in our business. It is
16 not a particular area of our focus. So for the purposes
17 of this sheet, we went through a process to identify
18 customers that we would consider to be education
19 customers.

20 Q And can you walk me through that process?

21 A Sure. In this sheet, there is a -- I'm just refreshing
22 myself for a minute and zoom in for a minute.

23 Yes, so the process involved going through our
24 customer list, and we were able to extrapolate from
25 customer names if a customer was either education or



1 not. And we determined that the education customers had
2 specific parts of their name to identify whether or not
3 they are an education entity or not. This is our B2B
4 channel, this is what we do is we have our -- we have a
5 customer name. Usually that's what we bill the
6 customer. And you can see that in terms of account
7 name, that's for account name. That is Column Q. And
8 we went through a process where we continuously scrubbed
9 the list to try to understand would be considered a
10 education customer.

11 So we looked for certain things in a customer name
12 that would identify them as education or not. So we
13 looked at universities, colleges, community colleges,
14 law schools, and things like that determined them to be
15 college. And then we went through and determined
16 district, high school, school, academy, unified school
17 district, USD, ISD, consolidated school districts, like
18 CSD, CUSD, elementary, board, education, HS for high
19 school, H.S. for high school, SCHLS, middle, and
20 determined those to be school -- you know, an indicator
21 that it is a school. And then we also went through and
22 tried to identify some other nonprofits, like hospitals
23 and healthcare organizations, so . . .

24 And in particular, the ones that I had mentioned from
25 district, high school, elementary school, academy,



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1 board, CUSD, ISD, education, all those, like, particular
2 words and anything like them in our query would be
3 considered K through 12 schools. And so that's what we
4 went through to determine whether or not these customers
5 were school districts or not, or colleges as well
6 because we included those in some of this analysis.

7 Q And going over to this Column AB, it says "Run_date"?

8 A Yes.

9 Q And it is populated 8/9/24?

10 A Yeah.

11 Q What is the significance of that date?

12 A That is the date in which the query was run against our
13 database, customer and billings database. And that
14 would be August 9th, '24, just to clarify in the
15 direction of those two.

16 Q You mentioned B2B channel business. Can you describe
17 what that is?

18 A Yeah, this is the area of our business where we sell to
19 other institutions -- or not institutions, but I guess
20 entities. Like mostly it is enterprise, small business,
21 mid-sized businesses. There are charitable
22 organizations. There are school districts like you see
23 in this list here. So we -- we don't particularly focus
24 in the education area, but they are welcome to be
25 customers of our organization.



1 Q And on this spreadsheet, does it indicate what type of
2 product segment they purchased?

3 A Yes. Hold on -- my apologies.

4 Q Is that M?

5 A No, hold on a minute. I don't think this data -- it
6 is -- yes, it is Column M, "PRODSEG," yeah.

7 Q Okay. And these look to be abbreviations?

8 A That's correct.

9 Q For -- do these abbreviations match with the product
10 segments we talked about earlier?

11 A Yes, and if you -- yeah, if you want a key for that, it
12 would be back on that sum invoice tab where you see PD
13 equals Parallel Desktop. RAS equals Parallel RAS.
14 That's a good key for that as well.

15 Q Okay.

16 A And then even in "DataBill," there is a section in
17 DataBill that shows PRODSEG, the actual name -- anyway,
18 so if you needed to know more, you could find it in the
19 DataBill tab. It is in Column W, all the way at the
20 top.

21 Q Okay. Up here?

22 A Yeah, you have to go to Row 4, I guess. Just scan up
23 with your scroll wheel. Yep, that's a little key.

24 Q Oh, I see for the key. Okay. But this DataBill does
25 not correlate to the educational customer



1 specifically, or does it?

2 A I like statistics, so correlation has a very -- yeah,

3 correlation does not equal causation and subsets, et

4 cetera. So this DataBill is -- remember this is the

5 entirety of the download from our billings database.

6 Data education is a subset of that billings information,

7 but it includes customer name. And it is isolated to

8 those customers that are identified as education

9 customers.

10 Q Okay.

11 A And other nonprofits. So there are some other

12 nonprofits in there as well.

13 Q Okay. And I might have missed -- sorry, if I can a

14 follow-up -- a clarifying question, I may have missed

15 that. I guess -- so I'm looking on here in the

16 DataBill, I don't see any customer names; is that

17 correct?

18 A That's correct.

19 Q And -- okay. Is this then -- this DataBill is tied

20 product-specific as opposed to customer?

21 A That's correct. Yeah, the DataBill download

22 collapses -- remember, I think we talked about this

23 earlier, this information is billings information. It

24 is 31,000 rows and it is a build of all the permutations

25 of our -- of our billings information, permutation



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1 meaning every which -- or one of those columns is a
2 categorical variable, and it allows us to kind of take a
3 data dump-out of our billing system to be able to -- to
4 collapse and roll-up our financial information by any
5 one of these categorical variables being the columns.

6 And so there is no customer information in here. It
7 is pretty obvious, there is no column that says customer
8 name. And so that -- this particular use of this data
9 abstract is for the purposes of developing, for example,
10 the sum invoice tab. So that green tab we talked about
11 just about an hour ago.

12 Q Okay. Right. Okay. I recall that.

13 A Yep.

14 Q So if -- so if we are going back to data education,
15 this field?

16 A Yes.

17 Q And so when -- so to figure out how a sale -- I'm
18 going to give an example looking at Line 10, so a sale
19 of this product segment GR to [REDACTED]
20 [REDACTED], where does that sale track to? Which entity?
21 Is that -- it looks like that could be through the
22 DataBill; is that how I'm understanding that? That I
23 would look up here on the subsidiary to understand
24 where that -- where that sale or revenue is tracked to
25 or could you explain how that works?



1 MR. RATAIN: Objection to form.

2 THE WITNESS: There -- each product line has
3 cost -- not each -- any product line that has physical
4 cost to them, which is very minimal sometimes. It is
5 like --

6 BY MS. PETERSON:

7 Q Mm-hmm.

8 A Most of our software is now just downloaded
9 electronically, but the physical component is becoming
10 increasingly minimal at the business. There is a team
11 that does some of these manufacturing activities.
12 Increasingly, it is a lot -- a lot less shrinkwrapped,
13 that we would call it. Products that's in stores and
14 CD-ROMs is extremely rare.

15 Sometimes there is a download key on a card
16 somewhere. But I can't tell you which entity those
17 expenses initially flow through, but there may be
18 allocations from wherever they are originated to the
19 particular product segments, at which point they are
20 recorded on a particular product segment. And that's at
21 some point, like you said, they will eventually roll up
22 into the consolidated financial statements of Cascade
23 Parent Limited.

24 Q Okay. And for the cloud computing, which entity is --
25 is each individual product segment paying a portion of



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I, KRISTIN D. MANLEY, a Certified Stenographic Court Reporter in and for the State of Washington, residing at Montesano, do hereby certify;

That the foregoing proceedings were taken before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true and complete transcript of said proceedings consisting of Pages 1 through 192;

That as a CCR in this state, I am bound by the Rules of Conduct as Codified in WAC 308-14-130; that court reporting arrangements and fees in this case are offered to all parties on equal terms;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand
this 14th day of November, 2024.

Kristin D. Manley
Kristin D. Manley, CCR No 2211
Certified Stenographic Reporter

EXHIBIT 8

Document title: Dolphin Learning Zone

Capture URL: <https://learn.yourdolphin.com/professionals>

Page loaded at (UTC): Tue, 12 Nov 2024 20:56:25 GMT

Capture timestamp (UTC): Tue, 12 Nov 2024 20:57:05 GMT

Capture tool: 10.52.0

Collection server IP: 54.145.42.72

Browser engine: Mozilla/5.0 (X11; Linux x86_64) AppleWebKit/537.36 (KHTML, like Gecko)
Chrome/126.0.6478.234 Safari/537.36

Operating system: Linux (Node 20.17.0)

PDF length: 4

Capture ID: rZERicTjapxWwQkH6KT8Kc

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Learn in-depth knowledge about the
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Capture timestamp (UTC): Tue, 12 Nov 2024 20:57:54 GMT
Capture tool: 10.52.0
Collection server IP: 54.145.42.72
Browser engine: Mozilla/5.0 (X11; Linux x86_64) AppleWebKit/537.36 (KHTML, like Gecko)
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Birch Training Institute

The Birch Training Institute has been offering, since 1972, professional staff development, program consultation and training, and general education to groups or individuals seeking to expand their expertise and capacity to provide services to children with autism spectrum disorder (ASD) and related development disabilities.

The principal goal of the Birch Training Institute (BTI) is to train professionals to utilize best practices to support people with disabilities of all ages to realize their full potential.

Those who have participated in BTI training appreciate Birch's turnkey approach to learning and the helpful information provided. Administrators particularly appreciate the cost-effectiveness of quick, in-depth and hands-on learning that allow their staff to easily implement effective methods immediately following training.

BTI staff have developed specialized training specific to the needs of the customer. While most training is done on-site, when large numbers of staff require training, or if follow-up training is needed to help staff utilize new tools and information, BTI can arrange off-site training and follow-up.

Remote Learning

During the COVID-19 pandemic, Birch Family Services will be offering NYS Mandated Training live via Zoom Meetings. Please note the offerings below and see the [Training Schedule](#) to register for these courses. If you have any questions please call 212-616-1858 or [email us](#).

- Monday, June 1 *School Violence Prevention and Intervention* 2:30-4:30 p.m.
- Thursday, June 4 *Identification and Reporting of Child Abuse and Maltreatment* 2:00-4:00 p.m.
- Thursday, June 11 *Training in the Needs of Students with Autism* 1:00-4:00 p.m.

Classroom Training

Birch classrooms in Manhattan, Bronx, Queens, and Brooklyn serve as training sites for individuals, families, school districts, and community agencies affected by ASD or other related developmental disabilities.

Consultation Services

Birch provides a range of onsite consultation services to school districts and other service providers in areas of individual consultation, program design, training, problem solving and professional development.

Autism Methodology

Birch Autism Training is primarily based on methods from *Structuring the Education of Students With Autism Spectrum Disorder*. This incorporates structured teaching, individualized instruction, and a focus on communication and socialization.

Birch Training Institute provides educational and behavioral training and consultative support and guidance designed to address the unique learning, social, emotional, and behavioral needs of children and individuals with ASD and related disabilities.

Create your BTI Account

Haven't yet created a User Name/Password?

I am:

Birch Employee

Not a Birch Employee

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Typical Training Class



ABOUT US

Birch Family Services empowers individuals with autism and developmental disabilities to lead fulfilling lives. We support more than 2,000 individuals and their families each day throughout New York City.

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